

STATE OF CALIFORNIA
THE RECLAMATION BOARD
REGULAR BOARD MEETING
OPEN SESSION

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, AUGUST 17, 2007

8:36 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Rose Marie Burroughs, Member

STAFF

Mr. Jay Punia, General Manager

Mr. Stephen Bradley, Chief Engineer

Mr. Eric Butler, Senior Engineer

Ms. Nancy Finch, Legal Counsel

Mr. Dan Fua, Supervising Engineer

Mr. Scott Morgan, Legal Counsel

Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Mr. Paul Brunner, TRLIA

Mr. Stein M. Buer, SAFCA

Mr. Joe Countryman, MBK Engineers

Mr. Stuart Edell, Butte County Public Works

Mr. Tom Foley, Concerned Citizens for Responsible Growth

Mr. Les Heringer, M&T Ranch, Butte Basin

Mr. Wilbur Huang, URS Corporation

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES CONTINUED

Ms. Lisa Kirk

Mr. Carl Lindmark, Reclamation District 784

Mr. Ric Reinhardt, MBK Engineers

Mr. Thomas Rice, Rice River Ranch

Mr. Scott Shapiro, TRLIA, M&T Ranch

Mr. Keith Swanson, Department of Water Resources

Mr. Richard Webb, Reclamation District 784, TRLIA Board

Mr. Dave Wheeldon, Department of Water Resources

Mr. Steve Winkler, San Joaquin County Public Works

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

INDEX

	PAGE
1. Roll Call	1
2. Closed Session	1
3. Approval of Minutes - May 18, 2007, & June 8, 2007 - No Action	
4. Approval of Agenda - No Action	2
5. Public Comments	26
6. Report of Activities of the Department of Water Resources	12
7. Three Rivers Levee Improvement Authority Monthly Report	44
REQUESTED ACTIONS - PROJECT OR STUDY AGREEMENTS	
8. Consider Approval of Changes to the Delta Levees Subventions Guidelines and Requested Reimbursement Amounts - No Action	
9. Modifications to Levee at Wadsworth Canal, Sutter County - No Action	
10. Consider Proposed Reclamation Board Policy Regarding Hydraulic Impacts Due to Improvements to the Sacramento and San Joaquin Rivers Flood Control Projects - Discussion Only	119
INFORMATIONAL BRIEFINGS	
11. Phelan Levee Erosion, M&T Ranch, Butte Basin	155
BOARD REPORTS	
12. Board Comments and Task Leader Reports	3
13. Report of Activities of the General Manager	8
14. Future Agenda	34
15. Adjourn	209
Reporter's Certificate	210

1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen.

4 Welcome to the State Reclamation Board meeting.
5 Let's go ahead and bring the meeting to order. Since
6 General Manager Punia is not here, I'm going to go ahead
7 and call the roll.

8 So let the record reflect that Board Member
9 Doherty and Board Member Rie are not present. With the
10 exception of those two, all members are present.

11 Let the record also reflect that we do not have a
12 quorum this morning. So we will be tabling or postponing
13 action items -- certain action items on the agenda for
14 today.

15 So at this time we'll move into closed session to
16 discuss litigation, Natural Resources Defense Council
17 versus Reclamation Board, Case No. 06CS01228 pursuant to
18 Government Code 1126(e)(2)(A).

19 (Thereupon the Board entered into closed
20 session.)

21 (Thereupon a break was taken in
22 proceedings.)

23 PRESIDENT CARTER: Good morning, ladies and
24 gentlemen.

25 Welcome to the meeting of the State Reclamation

1 Board.

2 For the members of the public who just joined us,
3 the Reclamation Board did hold a closed session beginning
4 at 8:30 this morning to discuss litigation, as agendized
5 for today's agenda.

6 We are now on Item 3. Also, for the record and
7 for the public, again, we have three members of the Board
8 present today. We do not expect that the other two
9 members, Member Doherty, who is traveling in Peru, and we
10 hope is safe as a result of the earthquake; and Member
11 Rie, who has had a family emergency in the middle of the
12 night, last night, is not able to attend today. So we
13 don't have a quorum, and we don't expect to have a quorum
14 today, for the meeting. So action items will be tabled
15 for a future meeting.

16 So anything that involves a vote or requires a
17 vote of the Board will not be acted on today, unless
18 Member Rie is able to resolve her emergency and come
19 today.

20 So with that, we will be tabling the Approval of
21 the Minutes, Item 3; tabling the Approval of the Agenda,
22 Item 4. And that brings us to Item 5, which is Public
23 Comment.

24 This is the time when the public, any member of
25 the public, can address the Board on unagendized items for

1 today. We invite any member of the public to come and
2 address the Board. We ask that the members of the public
3 try and limit their comments to five minutes. And we also
4 ask folks to please fill out these little 3-by-5 cards,
5 which are available on the table at the entrance to the
6 auditorium, or from Ms. Pendlebury here, at the front, so
7 that we know to recognize you.

8 So I -- I don't have any cards today.

9 Are there any members of the public that do wish
10 to address the Board on unagendized items today?

11 Okay. Seeing none, then we will move on.

12 As noticed in the agenda, items will not be heard
13 before the time listed. So -- however, untimed items will
14 be heard at any time. So what we are going to do at this
15 point is jump to Item 12, Board Comments and Task Leader
16 Reports.

17 What I would like to do is just go around the
18 table here. Any Board members have task leader reports,
19 comments they would like to make?

20 Butch, none?

21 Rose Marie?

22 MEMBER BURROUGHS: Oh, yes.

23 I have three task leader reports to make comments
24 on today. I wanted to first report that in attending the
25 levee conference this month, we had the opportunity to

1 meet with several of the Corps, in particular, General Van
2 Antwerp from D.C.

3 And in his presentation at the levee conference,
4 he mentioned that he had hoped that in working
5 collaboratively together, that if you have the right
6 people on the right subject in the right amount of time
7 that solutions could be made. And during that conference,
8 then we were able to gather to start a roundtable to
9 discuss future collaboration. And we had a very
10 successful roundtable meeting during that conference to
11 set up.

12 And I'm very happy to say that all agencies so far
13 have been very positive. And our goal is to establish our
14 common ground to work in a positive way and to look at all
15 aspects, of all the issues before us, that have been
16 before us, and bring together a solutions team that will
17 be able to increase public safety. And we'll see where it
18 goes from there. But we're very, very excited about that.

19 And then secondly, I just wanted to say that I did
20 attend the interagency meeting and that there was just so
21 many positive comments, with Keith Swanson on that
22 interagency group.

23 In particular, the success that they have had has
24 been outstanding, and hopefully that model will be able to
25 be taken further.

1 From that, it sounds like the interagency has
2 developed several subcommittees that are working on
3 different aspects that will be able to bring more
4 information to the interagency executive team.

5 And then thirdly, I attended the conference that
6 was down in Stockton and found it to be very educational.
7 And I look forward to attending more of them.

8 Thank you.

9 PRESIDENT CARTER: Thanks, Rose Marie.

10 In relation to the roundtable, members should have
11 a copy of a letter along with a contact list and a vitae
12 from Dr. William Reck Meyer.

13 VICE-PRESIDENT HODGKINS: I don't see it.

14 PRESIDENT CARTER: It would have been supplied
15 this morning.

16 MEMBER BURROUGHS: That's correct. It should have
17 been supplied this morning.

18 PRESIDENT CARTER: We'll make sure you get a copy
19 of that. But this letter was sent out to each of the
20 individuals on the list as an invitation for them to
21 participate in this roundtable discussion. And it was a
22 letter from me to those individuals for the roundtable to
23 occur on the evening of the 29th as well as the day of
24 August 30th here, in Sacramento. And there will be more
25 information to follow up.

1 We had engaged the services of Dr. Reck Meyer to
2 help facilitate that discussion. Rose Marie and I have
3 had several conversations with him. We think he's going
4 to be a big help in terms of helping people come to a
5 meeting of the minds, hopefully -- recognizing this is a
6 stretched goal, but hopefully a consensus on what a levee
7 vegetation standard for California might look like from a
8 policy perspective.

9 So we're very optimistic.

10 And Rose Marie had done a lot of hard work in
11 pulling all this together, and has the staff in terms
12 of -- on a very quick and short time frame. So we hope
13 that we get some good participation. Secretary Chrisman
14 has agreed to follow up with the folks from the resource
15 agencies at both the state and federal level to encourage
16 them to make time available for this. And we're very
17 optimistic and hopeful that we can have the right people
18 there and have some good productive discussions with
19 regard to the levee vegetation standard.

20 So I will make sure you get a copy of this, Butch.
21 In fact, if you want to give that to him.

22 So the other thing that I want to let the board
23 members know is that Congressman Cardoza has called for a
24 number of state and federal agencies to participate in a
25 discussion with regard to the levee situation, the levee

1 status, in the San Joaquin Valley.

2 And he invited myself and Mr. Punia to participate
3 in that discussion and, we do plan on attending that.
4 That's occurring on the 23rd of August in the afternoon,
5 from 2:00 to 4:00 p.m. So we will be participating in
6 that as well.

7 I also suggested that Rose Marie, if you had the
8 time available, you might want to come and listen to that
9 discussion, if you have the time available.

10 So that's all I had.

11 We did have an informal kind of meet-and-greet
12 this morning so that the public knows Mr. David Gutierrez,
13 who's going to address the public as part of the Report of
14 the Department of Water Resources later on this morning.

15 And Mr. Gutierrez is -- I think he's been in his
16 position as chief deputy director, Department of Water
17 Resources, in charge of California FloodSAFE, for about a
18 month or six weeks. Mr. Gutierrez just walked in. So we
19 will all get a chance to meet him a little later on in the
20 meeting today.

21 That's all I had.

22 Does -- Butch --

23 VICE-PRESIDENT HODGKINS: In relation to the 408
24 task force, I -- we had a 408 panel at the conference and
25 a good discussion with folks at all levels about

1 proceeding with the task force. That we hope to develop
2 information to clarify the process.

3 Did the 408 letter get out?

4 GENERAL MANAGER PUNIA: Not yet. It's been --
5 it's been reviewed by the director of the Department of
6 Water Resources.

7 As you may know, it's a joint letter which will be
8 signed by the Board President Ben Carter, and DWR Director
9 Lester Snow.

10 So it's been revised a few times. And it's been
11 reviewed at the director's office. As soon as it's
12 approved by the director, then we will get it signed and
13 mail it.

14 VICE-PRESIDENT HODGKINS: Thank you.

15 PRESIDENT CARTER: Okay. Anything else? Staff
16 have any comments?

17 Okay. At this time, Jay, do you want to give your
18 Report of the General Manager?

19 GENERAL MANAGER PUNIA: A few information items.

20 Jay Punia, general manager of the State
21 Recollection Board.

22 As Ben mentioned, we invited David Gutierrez, and
23 he's going to address the Board today. And during the
24 September meeting, we have invited newly-appointed
25 District Commander Colonel Thomas Chapman, U.S. Army Corps

1 of Engineers. We have invited him, and he has accepted
2 our invitation. He will meet informally with the Board
3 members before the meeting and then address the Board
4 formally, around 9:20, at the September meeting.

5 Staff has a symposium on vegetation August
6 28th and 29th. Several Board members and Rec Board staff
7 will participate in that symposium.

8 And the stakeholders roundtable meeting will take
9 place on August 30th. And it's meeting -- inviting people
10 only. And as Ben mentioned, we have sent the invitation
11 to several people from levee maintaining agencies like
12 U.S. Army Corps of Engineers, Department of Water
13 Resources. And we have invited resource management
14 agencies, like Department of Fish and Game, U.S. Fish and
15 Wildlife Services and other fisheries.

16 Staff participated, at the request of Three Rivers
17 Levee Improvement Authority, to participate in a meeting
18 with their consultants. The focus of that meeting was the
19 proposed alignment in which they provided technical
20 information that established the basis on which they
21 selected the alignment. From Reclamation Board, myself
22 and Dan Fua attended that meeting, and several people from
23 Department of Water Resources participated in that meeting
24 also.

25 For the information of the Board, Union Pacific

1 Railroad was performing work on their bridge over the Bear
2 River, near Wheatland without a permit. So the
3 Reclamation Board stopped that work and requested them
4 that they need a permit, and until the permit has been
5 approved, that they are not allowed to perform that work.

6 PRESIDENT CARTER: What was the nature of the
7 work?

8 GENERAL MANAGER PUNIA: They are retrofitting.
9 Steve, it's a new bridge, or they are retrofitting the old
10 bridge?

11 CHIEF ENGINEER BRADLEY: They are replacing the
12 existing bridge. Actually, they are building an adjacent
13 new bridge -- a bridge adjacent to the existing bridge,
14 but it will be a new bridge.

15 But what they have done is, they have filled about
16 one-third of the floodway.

17 PRESIDENT CARTER: Thank you.

18 CHIEF ENGINEER BRADLEY: We're going to be looking
19 at that, probably, I think, Monday. We're going to take a
20 trip up there. They also did not comply with CEQA in any
21 way, shape, or form.

22 GENERAL MANAGER PUNIA: A question was asked by
23 Board Member Lady Bug that we should hire a hydrologist.
24 I just wanted to tell the Board that our BCP has two
25 engineer positions for fiscal year '08 and '09. And we

1 have the option to pick up a hydraulic engineer or any
2 specialty we want. So we'll take into consideration when
3 the positions are approved and when we are hiring a new
4 position to fill that position.

5 As far as the major permits issued last month, we
6 have issued the Sacramento Area Flood Control Agency,
7 Natomas Cross Canal strengthening permit; and we also
8 issued a permit for Three Rivers Levee Improvement
9 Authority, Feather River levee setback, Segment 1 and 3.
10 And after obtaining the U.S. Army Corps of Engineers'
11 approval for Section 408 to alter the project, both of
12 these permits have been issued.

13 We are in the process of updating our Web site.
14 And we are requesting the Board members to provide us
15 additional information about their bios. And we will be
16 including that information on our Web site.

17 Recently, we have received a letter from City of
18 Roseville requesting us to modify our PCA, Project
19 Cooperation Agreement, to include a betterment for the
20 water supply project. We are discussing the proposal with
21 the Department of Water Resources staff, and we will be
22 talking to our legal staff for additional input.

23 I have received, based on that request, that we
24 cannot include the water supply project because our
25 authority is on the flood side only, that we may not be

1 able to modify our Project Cooperation Agreement with the
2 U.S. Army Corps of Engineers.

3 Thank you.

4 PRESIDENT CARTER: Any questions for Mr. Punia?

5 MEMBER BURROUGHS: Was there any handouts on the
6 meeting that you attended in regards to your workshop?

7 GENERAL MANAGER PUNIA: Yes. I have copies of the
8 handout I will make available to the Board members.

9 MEMBER BURROUGHS: Thank you.

10 PRESIDENT CARTER: Okay. Very good.

11 All right. At this time, we will move on, back on
12 schedule, Item 6, Report of the Activities of the
13 Department of Water Resources.

14 Mr. Swanson?

15 MR. GUTIERREZ: I would like to just introduce
16 myself. The purpose of me coming today really is just to
17 introduce myself.

18 My name is Dave Gutierrez. I am the acting
19 director of FloodSAFE. I look forward to working with the
20 Board on the many difficult and challenging issues that we
21 have in the future.

22 I will tell you a little bit about some of the
23 things that we're starting to do right now. FloodSAFE, of
24 course, is a very large program that's going to engage our
25 entire department. And as a result of that, the phase

1 that we're in right now is doing that. We have an
2 executive leadership team within the Department of Water
3 Resources.

4 This team is composed not only of flood management
5 managers but also managers throughout the Department. And
6 areas of the expertise that we do have within the
7 Department, we're going to rely heavily on them to engage
8 if FloodSAFE.

9 And so we're at an organization -- we're at a
10 point where we're putting together the organization of the
11 Department of Water Resources, around FloodSAFE, and we
12 are beginning to develop our communication plans, our
13 strategic plans, etc.

14 As we outreach to you and our other stakeholders,
15 we look forward to communicating effectively so that
16 there's a clear understanding of the direction that we're
17 going, with the many projects that we're dealing with.

18 So with that, I just wanted to introduce myself.
19 I look forward to working with you in the very near
20 future. And I'm sure we'll get a lot done.

21 PRESIDENT CARTER: Mr. Gutierrez, welcome. We're
22 very pleased that you have joined us. As I'm sure you
23 heard before, your reputation is sterling. So we really
24 do look forward to working with you and your staff.

25 Thank you.

1 MR. DAVIS: Thank you very much. I look forward
2 to working with you.

3 MR. SWANSON: Good morning. Keith Swanson, acting
4 chief of the Division of Flood Management.

5 You stole a little bit of my thunder talking about
6 the acts on the vegetation management front. Lots going
7 on.

8 The levee conference that a lot of us attended was
9 a really good exchange of ideas, a lot of information on
10 the program. And I got to compliment the Board, because
11 there was great Board participation. I think that's
12 really, really important.

13 And there was a follow-up meeting with
14 stakeholders and the Corps. Rose Marie participated in
15 that. We continued some of the momentum, some of the
16 discussion, on the veg management issue.

17 Next week, levee symposium, Butch, I know you're
18 on a panel. A lot of us are participating in that. And
19 the Board's taken a lead in setting up a follow-up
20 roundtable. You know, Ben, you mentioned Rose Marie and
21 Board staff, but Ben also has been key in setting that up.
22 I wanted to thank you for your leadership and support in
23 this, because I think it's important that we get this
24 dialogue going and we all work together.

25 We made some short-term progress, working

1 collaboratively. Mentioned our interagency collaborative
2 group. You know, we've had some success on the critical
3 erosion sites. And certainly the Tisdale bypass, the
4 ability to get that out, into construction, is a testimony
5 to our ability to work together.

6 Having said that, we have got to have a clear
7 focus on what our long-term goals are also. Improved
8 public safety is, certainly, all of our goal. And to
9 achieve that, we're going to have to work with capital
10 improvements on our flood control project, certainly
11 better maintenance will be key. We've got to come up with
12 a sustainable system.

13 To do that, we are going to have to engage the
14 resource agencies, and we're going to have to address
15 their goal, which is -- we're going to have to have
16 management consistent with listed endangered species
17 recovered. And my personal feeling is, we've got to get
18 everything documented in the form of permits that clearly
19 state what the expectations are for all the various
20 parties.

21 And it has to include some kind of safe harbor
22 provision, that as maintainers, we're not penalized for
23 being successful, helping with species recovery.

24 Moving on to our levee evaluations program, it has
25 been affected by the lack of a state budget. Right now,

1 we should have 15 rigs and 5 CPTs working throughout the
2 urban areas. In fact, we're down to 1 CPT rig in Sutter
3 County. We may get a couple of more rigs going over in
4 Natomas. But we've got issues with cash flow. This could
5 result in up to a six-month delay in the overall program,
6 depending on what happens with the weather when the budget
7 is finally passed.

8 We are working to try to reallocate money
9 internally, but it's -- there's a little bit of process
10 associated with that. And so unfortunately, don't have
11 good news on that front.

12 We have recently released preliminary geotechnical
13 reports for Marysville, Reclamation District 17, and West
14 Sacramento. Not a lot of surprises. RD 17, I think the
15 south have -- their levees have underseepage problems.
16 West Sacramento, there's a combination of seepage
17 stability, and they have got a lot of different issues.

18 An article in the paper this morning about getting
19 going on some of the problem areas in the north.
20 Marysville, maybe a little bit better story. There's a
21 couple areas where there's underseepage issues and it's
22 probably tied to some geomorphic issues and channel that
23 kind of connect to that center lake in the city.

24 We do have some funding that is going to allow
25 electromagnetic surveys to begin in September. And so

1 that's still on track.

2 We also continue to work on the scope of work for
3 a nonurban levee evaluations program. We're looking at
4 two \$60 million contracts. About 30 million of that is
5 associated with San Joaquin River Restoration.

6 Moving on to Tisdale Bypass Sediment Removal
7 Project, DeSilva Gates Construction was the low bidder.
8 Their \$4.7 million bid was almost half of the cost of the
9 Fremont Weir removal.

10 About the only good thing with the economy turning
11 south is that we're seeing it on our flood control
12 projects. We're seeing reduced costs on the flood control
13 projects. So that's a good thing. Clearing has started
14 out there. And we're thinking, we're going to see
15 scrapers running next week.

16 PRESIDENT CARTER: I would like to congratulate
17 you. I saw dust flying out there three days ago, actually
18 with the dozer starting to clear the channel ahead of the
19 scraper. So that's great news.

20 MR. SWANSON: And again, I think it was the help
21 of the Board and the help of Assemblyman LaMalfa that
22 helped us get through the property issues. And then it
23 was the resource agencies that really worked with us to
24 make sure this happened, once we were able to nail down
25 our project description. So it's a success story.

1 PRESIDENT CARTER: Great. Great. I can tell you
2 that all the locals up there are just dancing on their --
3 the hoods of their pickups.

4 MR. SWANSON: The locals in -- the Sutter
5 maintenance yard have been fighting the sand dunes in the
6 channel for the last ten years.

7 Next topic, early implementation project grant
8 program. That's a cost share program for rehabilitation,
9 reconstruction, and replacement, or improvement of State
10 Plan of Flood Control features.

11 There were seven applicants in that. And they are
12 included in the report. I wasn't going to go through each
13 of those. They are being evaluated in a two-step process:
14 The first step is to meet the governor's eligibility
15 criteria that was contained in the Bond Expenditure Plan;
16 and then the applicants that pass must then demonstrate
17 their financial capability.

18 The grant award is depending on passage of the
19 state budget. So we're, you know, treading water a little
20 bit on that one.

21 And I think once the budget is passed, we'll be
22 moving forward with the select projects.

23 PAL process, Ricardo Pineda gave me a call this
24 morning. He was going to be here at 1 o'clock to be
25 available for any questions. He did give you a pretty

1 thick handout in the Board packet. He called me from
2 Texas and said that his airline was having some problems
3 so he wasn't sure if he was going to get here or not.

4 Kind of as a summary, we, as a department, have
5 not received any written requests to participate in any
6 PAL agreements at this point in time.

7 There were discussions with RD 17. And the state
8 was unwilling to endorse PAL process because of
9 underseepage issues. And there's been some discussion on
10 that; a lot of action recently on that.

11 And one of the things that I heard was that FEMA
12 had indicated that they would not be finalizing a map for
13 the RD 17 area for at least 18 months because there are
14 encroachment issues in the San Joaquin area. They are
15 willing to apply or to grant a one-year waiver to allow
16 time for correction of the encroachment issues. And then
17 after that, they said there's going to be a certain amount
18 of processing time. So the earliest that a final map
19 could be expected is 18 months.

20 Now, RD17 is seizing on that. And they are
21 aggressively trying to move forward with local funded
22 repairs that would meet some of the underseepage issues,
23 would address some of those underseepage issues. And it's
24 my understanding that they are hoping they could get an
25 899 designation initially, based on the work that they are

1 proposing. And then do enough local funded repair work
2 that by the time the final maps are about to be in place,
3 that they would be out of the hundred-year flood zone, a
4 lot of work to do, a lot of unknowns that the department
5 has pledged to work with the folks down there and provide
6 geotechnical information as soon as possible. And I
7 think -- I understand, that our preliminary information
8 was sent out last night. So we're working together to try
9 to minimize some of the disruption.

10 Solano County also notified the Rec Board, I
11 guess, on May 9th, that the levees may be eligible for PAL
12 agreements. It's my understanding that the DWR declined
13 the request based on insufficient information.

14 I think this is probably a topic that's going to
15 heat up as FEMA moves north, and we got a lot more
16 communities subject to remapping. And so it's something
17 that we're going to have to discuss further and maybe take
18 a look at some of the Department's policies.

19 The Department has, you know, interceded
20 themselves in the middle of the process, and it does
21 appear that we have taken a stance that is a little bit
22 more rigorous than FEMA. And so I think additional
23 discussion on that is warranted. You know, clearly, the
24 FEMA criteria is that if, in your heart of hearts, you can
25 say that you think that a levee will pass the hundred-year

1 design event, then they are allowing that two-year process
2 to collect the necessary information.

3 We've stepped up and said, you know, we want to
4 see the information. And I think we have to ask
5 ourselves, is there something in the past performance that
6 causes us concern? And if there is, then, you know, I
7 think we're justified in saying we don't think PAL process
8 is correct. But if we are seeing good performance, FEMA
9 is intending the two-year process to allow time for
10 gathering information.

11 So we need to have some discussion on that.

12 Erosion repairs continue. The 1995 Ayres critical
13 erosion sites are winding down. There's pole cuttings to
14 be planted at four sites. The work had been scheduled
15 earlier, but because of the weather, it's been pushed off
16 until October.

17 The 2006 Ayres sites, Phase 2 work is getting
18 going on 22 DWR and Corps sites. Completion is scheduled
19 for November.

20 There's a couple of other sites: Cache Creek
21 Setback Levee, I think the designs are complete, and
22 construction is dependent on finishing real estate
23 acquisitions. I think property appraisals are ongoing
24 now. So if that is to occur this year, we would have to
25 get through the real estate issues, and it's going to take

1 some time because it's a very sensitive subject.

2 Special levee repairs, Sac River Mile 200.6, which
3 is up in Hamilton City, I think is moving forward. The
4 Department is working with the county on providing money,
5 cost shared money, through a grants program. And I think
6 the idea would be that the county would take the lead
7 based on using funding provided by the Department.

8 There are three other projects under review: The
9 Phelan Levee, which is going to be the topic of an
10 informational briefing this afternoon; 3B's overflow
11 structure also I think is going to be covered in the
12 afternoon briefing; and then just upstream of the Fremont
13 Weir, section of levee there where the Department
14 maintains a gauging station. That gauging station is
15 being threatened by erosion, so that's being talked about
16 also.

17 The 2006 PL84-99 rehabilitation system assistance
18 work is going on. The Corps initiated design on 62,
19 bordering 3, 4, and 5 sites. The state is working to
20 obtain the environmental permits right away and all the
21 material necessary for the permits.

22 The Corps also has agreed to fix six -- two sites
23 in RD 1500. I think that's based on an economic analysis.
24 Originally, they were rejected because of low
25 budget-benefit cost ratios. I think the Corps has

1 reconsidered that.

2 And then Butte Creek, you had one levee mile, 0.8
3 that are awaiting permits.

4 There's lots and lots of legislation there. I'm
5 not going to comment on any of it. There's a summary in
6 the package in the various legislation.

7 With that, I'm open for questions.

8 PRESIDENT CARTER: Are there any questions for
9 Mr. Swanson?

10 VICE-PRESIDENT HODGKINS: Do you say you won't
11 comment on any of the legislation?

12 MR. SWANSON: I wasn't planning to. I'm not as
13 versed on that. There's probably 20 bills.

14 VICE-PRESIDENT HODGKINS: Okay. I had just a
15 couple of questions.

16 If we go back in your report to the discussion of
17 the levee evaluation program, there's a statement in here
18 that says, "The program is being conducted with the goal
19 of providing 200-year level of protection in urban areas
20 and the design profile level of protection in rural areas
21 using Corps' underseepage projects."

22 Now, the implication of that is that the state's
23 Plan of Flood Control is 200-year for the urban areas and
24 whatever people get out of the existing profile in the
25 rural areas. And that might be a reasonable plan. I

1 don't know.

2 But given that there is no plan, is the data being
3 collected in a way where it would be usable for analysis
4 for larger events?

5 MR. SWANSON: Yeah. I don't think that your basic
6 geotechnical data collection is really something that is
7 dependent on the size of the flow. So I think that the
8 data will be usable.

9 The one discussion is, how much exploration work
10 do we do in the rural areas, especially if there's a
11 limited amount of available funding. And so there have
12 been some discussion that -- where we're doing three
13 borings every thousand feet in the urban areas, that may
14 be in the rural areas, we backed that off a little bit to
15 get a sense of what the scale of the problem is there, so
16 that as we move forward, we have a better ability to plan
17 potential projects, develop cost estimates, that type
18 of -- that type of thing.

19 VICE-PRESIDENT HODGKINS: So that comment is more
20 related to the frequency of the sampling than it is to
21 the....

22 MR. SWANSON: I think so.

23 And then the other comment is that Dave picked up
24 on it a little bit, we're really trying to change how
25 we're rolling out FloodSAFE. We are now in the process of

1 trying to develop a strategic plan. We did not have one
2 before.

3 And that strategic plan is trying to deal with
4 some of these issues about 200-year flood protection for
5 urban versus rural '50, '57 profile, you know, those types
6 of things.

7 There were some discussion and there was -- there
8 was a level of understanding amongst some people. But
9 it's not something that has been widely disseminated and
10 discussed publicly. So I think you're right. I don't
11 think we have a state Plan of Flood Control. I don't
12 think we completely know where we're going with all this
13 bond money.

14 And the expectation is that we will try to get
15 that down, you know, in writing and that we will go out
16 with the public outreach, and we will solicit ideas and
17 input from the various stakeholders and then modify our
18 overall program.

19 VICE-PRESIDENT HODGKINS: Okay.

20 And then I wanted to add my congratulations to
21 Ben. I know you, personally, and your staff, have worked
22 so hard on that Tisdale Project. And it is nice, finally,
23 to see dirt flying. That's great.

24 Then I wanted to ask a little bit about early
25 implementation projects. I read the staff report, which,

1 in effect, would lead you to believe that the criteria for
2 selecting these is not complete, and that's what's holding
3 us up.

4 But I think I heard you say, and I'm trying to be
5 sure about this -- because Three Rivers monthly report
6 said something a little differently, basically says, this
7 is being held because we don't have a budget.

8 MR. SWANSON: This is being held up because we do
9 not have a budget.

10 VICE-PRESIDENT HODGKINS: Thank you. That's all I
11 have.

12 PRESIDENT CARTER: Any other questions for
13 Mr. Swanson?

14 Thank you very much.

15 MR. SWANSON: Thank you.

16 PRESIDENT CARTER: Okay. At this time what we'll
17 do is, I did receive a request for public comment. I
18 realize we have already passed by that, but we do have
19 some time and some flexibility in our calendar today.

20 So I would like to invite Ms. Kirk to come up and
21 address the Board under Item 5, Public Comment.

22 MS. KIRK: Lisa Kirk, Bethel Island, California.

23 I'm here today still because we don't know if
24 Bethel Island is the exception to the California Water
25 Code. And I know you have a letter here that you wrote

1 Contra Costa County, back in April, asking for a plan of
2 reclamation for the Delta Coast Project.

3 And I believe they wrote back, saying you need to
4 ask the reclamation district. And I am looking for an
5 answer to whether or not you have submitted any copies of
6 the reclamation plan for the Delta Cove Project, if
7 anybody's responded to you.

8 And if I put a public information request in to
9 see those certified copies, is there anything available to
10 me at this point?

11 SUPERVISING ENGINEER FUA: No. We have not
12 received the reclamation plan. The Contra Costa response
13 to us is that, you know, we should -- essentially, the
14 letter that we were sent was asking whether a reclamation
15 plan is necessary, because there was some question about
16 whether Bethel Island Municipal Improvement District is a
17 reclamation district.

18 The County's response to us was that, "Ask the
19 district," and that's what we've done.

20 MS. KIRK: Okay. So how long are you going to
21 give them to respond to you, considering this project is
22 underway?

23 SUPERVISING ENGINEER FUA: We have not put any
24 time frame on them.

25 MS. KIRK: Okay. So if I put in a request to see

1 these certified copies of this reclamation, you are going
2 to have to respond to me somehow. And I need a time limit
3 on that, because in this process, it would also give a
4 hearing to that. So I have not -- I haven't had access to
5 a hearing in front of this Board regarding that project
6 because no one's responded to your request.

7 LEGAL COUNSEL MORGAN: If you were to submit a
8 public record request, we would respond promptly. And if
9 we do not have a record, there's nothing to give you. So
10 we can only give you, as public records, what we have.

11 MS. KIRK: I mean, it says in the Water Code,
12 there is a time limit for the county to respond to you,
13 which was 30 days.

14 LEGAL COUNSEL MORGAN: Well, but only -- if this
15 is a reclamation district, and they are actually not a
16 reclamation district.

17 And so the question is, the legal question is,
18 whether or not -- because they were created and took over
19 an existing reclamation district, whether they are legally
20 treated as a reclamation district or they are something
21 else in their title.

22 So whether that takes them completely outside the
23 reclamation district law, in which case it doesn't apply.

24 MS. KIRK: But they are still under the Water Code
25 as being part of a flood control drainage improvement

1 dredging or a levee.

2 So I mean, that -- they receive state money from
3 you. So I mean, I thought we answered the question that
4 they are part of the flood control district.

5 LEGAL COUNSEL MORGAN: They are a district, but
6 not a reclamation district within the law that requires
7 reclamation districts to supply -- through the Board of
8 supervisors, to supply reclamation plans to the Board --
9 is the reclamation district law. And they may or may not
10 be subject to that law, in which case they would not have
11 to supply the plan to the county for submission to the
12 Board. We just haven't received an answer to that
13 question. I believe -- I don't know when Dan -- when were
14 you sent the letter?

15 SUPERVISING ENGINEER FUA: The letter was sent a
16 couple days ago.

17 MS. KIRK: A couple days ago?

18 SUPERVISING ENGINEER FUA: Yeah.

19 LEGAL COUNSEL MORGAN: We would be surprised to
20 have received an answer one way or another that quickly.

21 But at any rate, you are free to ask for whatever
22 we get, and we will provide that to you.

23 MS. KIRK: So have you Xed out -- so they don't
24 come under Water Code Section 8710 to 8723?

25 LEGAL COUNSEL MORGAN: I have not committed the

1 Water Code to memory. I don't know what sections those
2 are.

3 But I believe -- is that the reclamation district
4 law requiring a....

5 MS. KIRK: Right.

6 LEGAL COUNSEL MORGAN: No, we have not ruled it
7 out. That was widely -- that was the intent of the letter
8 that we sent originally to the county and now to the
9 reclamation district to say, because there's this curious
10 ambiguity in terms of how that district came to be and
11 because they -- they sort of stand in the shoes of a
12 preexisting reclamation district, they either are or are
13 not functionally the equivalent of the reclamation that
14 would be subject to those laws, had they behaved as though
15 they are a reclamation district in the past.

16 We don't know the answer to that. That's why we
17 asked the county and the county sent us --

18 MS. KIRK: Well, maybe we should ask DWR, because
19 if they are receiving subvention monies, 75 percent of our
20 monies, to maintain that levee to come from subvention
21 programs, then that state money that I would suppose would
22 come under the section of the Water Code and that they are
23 receiving them under the Water Code, as a flood control
24 project levee maintenance agency.

25 LEGAL COUNSEL MORGAN: Which is not necessarily

1 the same as a reclamation district under reclamation
2 district law.

3 The Reclamation District Act of the Water Code is
4 very specific about what it relates to. And if you are
5 something other than a reclamation district, you are not
6 part of that act.

7 MS. KIRK: I just -- on the Water Code, if we
8 should someday figure this out. On Section 8712, "No
9 levee along the river bypassed or any place mentioned in
10 this article nor any levee forming part of the Plan of
11 Flood Control adopted by this part of the Board should be
12 cut or altered without permission of the Board."

13 The breach structure -- the breach is going to
14 take place probably in about three months. So they are
15 cutting that existing levee.

16 I did give you a letter from FEMA regarding
17 CLOMARs, and that project was put through by Contra Costa
18 County to FEMA as fill. FEMA doesn't recognize the Bethel
19 Island levees as providing any protection, so they
20 consider the Delta Cove Project at an elevation above
21 fill.

22 So and not -- and that CLOMAR, because it was
23 based on fill, the breach structures were not taken into
24 consideration at all, or the fact -- or the existing levee
25 or the impacts on the adjacent property owners because of

1 the kind of CLOMAR Contra Costa County had, which is our
2 floodplain administrator submitted to FEMA. So just for
3 your own knowledge.

4 Thank you.

5 PRESIDENT CARTER: Thank you. Thank you very
6 much.

7 Okay. At this time we'll now move to -- let's
8 take a ten-minute recess, please. So we'll reconvene here
9 at 10:00 a.m.

10 (Thereupon a break was taken in
11 proceedings.)

12 PRESIDENT CARTER: We'll go ahead and continue
13 with the meeting.

14 I have a process question for the Board.

15 With regard to the requested actions, Items 8, 9,
16 and 10, which are action items, does the Board prefer to
17 hear these reports today and then revisit them at a future
18 meeting, or would you like to consider them all at once,
19 when we have a quorum of the Board? Any preference there?

20 If it's the Board's pleasure to wait, then we can
21 advise these people that they don't need to appear before
22 the Board today and they can get on with their day.

23 VICE-PRESIDENT HODGKINS: I personally think
24 that's a reasonable approach.

25 PRESIDENT CARTER: Rose Marie, you have any

1 preference?

2 MEMBER BURROUGHS: I have mixed feelings. I hate
3 to waste anyone's time, but we will have to anyway. But
4 if people -- I would like to hear what's being presented,
5 and it always helps to hear it twice.

6 But at the same time, I'm happy, if it's better
7 use of everybody's time, if we're not going to be able to
8 make a decision, to hear it at a later time. I'm pretty
9 much open. I would be happy to hear it. And if it's best
10 for those to come later, that's fine too.

11 PRESIDENT CARTER: Okay.

12 Let's see. We did have a briefing on the Delta
13 Levee Subventions Program last month. I would suggest
14 it's probably not necessary for those folks to stay for
15 that because we got a fairly thorough briefing last month.
16 So I would suggest and propose that the Board table Item 8
17 until a future meeting.

18 With regards to Modifications to Levee at
19 Wadsworth Canal, there was some -- an extensive staff
20 report within the Board packet that -- how about if we
21 table that one as well --

22 VICE-PRESIDENT HODGKINS: That would be fine.

23 PRESIDENT CARTER: -- for a future meeting. Okay?

24 I would prefer that we have a brief discussion
25 regarding the hydraulic impacts so that we can consider

1 the staff's perspective on that. So we'll go ahead and do
2 Item 10, briefly.

3 So with that, given our timing, where we are, at
4 this point is on Item 14, our Future Agenda. And given
5 what we just talked about, we ought to move Items 8 and 9
6 for our September agenda and move that on to that.

7 Also regarding the September agenda, there was a
8 discussion last month about having the meeting in the
9 Sacramento Valley next month, wanting to get the
10 Board's -- if there's any concerns or preferences one way
11 or the other with regard to location. We -- any
12 objections?

13 Okay. So we'll plan on having the meeting in the
14 Sacramento Valley. The proposed location last month was
15 Colusa. We'll -- I've made some preliminary inquiries and
16 there are facilities available, so we'll proceed in that
17 direction for the September meeting.

18 Are there other items that need to appear on the
19 agenda in September?

20 VICE-PRESIDENT HODGKINS: There was, in our
21 package today, a hand-delivered request from the City of
22 Roseville, City of Folsom, and San Juan Water, to modify
23 the PCA associated with Folsom.

24 And I think that it would -- from my perspective,
25 this item ought to be discussed at the next meeting. It

1 sounds like it's fairly critical in terms of time here if
2 it's going to happen. But I think we need to know, before
3 the Board can even talk much about this, what the
4 implications are with respect to the Folsom project and
5 how the cost sharing partners and other partners on this
6 project, SAFCA and the course of engineers, would feel
7 about this modification.

8 I would like to see it on as -- a sort of
9 consideration as whether or not we should consider
10 modifying the PCA, but get it resolved.

11 PRESIDENT CARTER: Okay. We can include that in
12 the agenda.

13 Any other items?

14 MEMBER BURROUGHS: We will probably have a new
15 item in the roundtable. I don't know if you want it as a
16 report.

17 PRESIDENT CARTER: Okay. Depending on the outcome
18 to the roundtable, we'll either agendize something
19 specific or it will be part of a task leader report on
20 that. Okay.

21 Anything else?

22 MEMBER BURROUGHS: I think Jay had talked about
23 Reggie Hill.

24 PRESIDENT CARTER: He's agendized under Item 12
25 for the informational briefings for September.

1 Jay?

2 GENERAL MANAGER PUNIA: As far as the permit
3 application, we are hoping that the Three Rivers Levee
4 Improvement Authority Application 18227 will be ready, and
5 we are tentatively scheduled for our September meeting.

6 And we did consider the application. But based
7 upon the input from the staff, it looks like they won't be
8 ready for the September meeting, so we are not including
9 them on the September agenda.

10 PRESIDENT CARTER: Okay. And the applicant has
11 been informed of that?

12 GENERAL MANAGER PUNIA: I think we will inform
13 them. I think Steve is in touch with the applicant.

14 Steve, do you want to elaborate on that?

15 CHIEF ENGINEER BRADLEY: Yeah. Nothing has been
16 changed -- nothing has changed from the last time when we
17 met. They haven't submitted anything; no designs are on
18 it. I think they are on hold, waiting for the budget. We
19 are not like Three Rivers where they have independent
20 funding; they need state funding in order to complete
21 their design. So until they get that money, they really
22 can't go ahead.

23 So even if the state budget was passed right now,
24 by the time they got their designs done and submitted, we
25 wouldn't be able to hear it in September, anyway. There

1 wouldn't be enough time.

2 So nothing's really changed on that. We'll bring
3 it forward as soon as -- this is a fairly straight-forward
4 project. We just haven't got anything to look at yet.

5 PRESIDENT CARTER: Okay.

6 VICE-PRESIDENT HODGKINS: I just would like to be
7 sure we follow up and let them know that that's our
8 perception, and so we don't see any way that it can be on
9 for September.

10 CHIEF ENGINEER BRADLEY: Jeff Twitchell and I
11 talked. Just caught me at a surprise, it was even put on
12 for September to begin with.

13 VICE-PRESIDENT HODGKINS: All right. Thank you,
14 Steve.

15 PRESIDENT CARTER: Okay. Anything else for
16 September?

17 Okay. So we will attempt to pull that agenda
18 together for September.

19 Good. All right.

20 At this point, we have -- we are -- excuse me. We
21 have another member from the public. We've got a few
22 minutes before our next timed agenda item, No. 7.

23 So we'll go ahead and invite Mr. Winkler to
24 address the Board under Item 5, public comment.

25 MR. WINKLER: Good morning. Thank you for

1 entertaining a late request to speak. I will be very
2 brief this morning.

3 Steve Winkler, San Joaquin County Public Works
4 representing also the San Joaquin County Flood Control
5 Water Conservation District, Stockton, California.

6 We are listening with very intent interest in the
7 panel's discussion, and are very pleased to hear
8 Mr. Swanson indicating that, perhaps, there's some
9 potential reconsideration of, you know, are we going to
10 sort of veto a PAL process and defeat the purpose of the
11 federally-intended opportunity to actually create the
12 data, rather than prove the data exists before you enter
13 into a PAL.

14 I'm a little concerned with, well, as we move
15 north, things are going to heat up. I think we need to be
16 even-handed for all regions in the fact that we move in
17 with -- maybe politically-more-sensitive areas should have
18 very little bearing on whether we're going to do PALs or
19 not and what position we're going to take.

20 Tick tock, August 22nd, several working days from
21 now, is the deadline for San Joaquin County's PAL
22 submittals, and a further interesting comment, that
23 Mr. Swanson made, that no PAL requests have been received.
24 Well, there's been a lot of debate over who they go to,
25 and we have yet to hear DWR announce who you submit them

1 to, to even have consideration at the DWR, if they are to
2 be the lead agency.

3 So you know, it's nice to get good, concise,
4 information out to the agencies that are trying to comply
5 with all the new hoops that seem to be created.
6 Obviously, we know who DWR is, so I guess we submit them
7 to the director of DWR, and it all will filter down.

8 The next wave will be a maintenance deferral
9 period that was mentioned earlier, that there is some time
10 before the final maps for San Joaquin County. We expect,
11 right now, with the exception of Reclamation District 17
12 and all the discussion that's taken place, there are no
13 other oxes being gored locally with our remapping of San
14 Joaquin County, but there are many other segments ahead as
15 we enter the end of the maintenance deferral periods that
16 are going to become PAL-eligible. And this issue has not
17 gone away; it is going to come up. And there are major,
18 major protective project levees that we're going to still
19 be grappling with this issue of who's on first and whether
20 it should supply. We'll have the Bear Creek system; we're
21 going to have the Calavares diverted canal Mormon Slough
22 system. And if the current positions remain unchanged,
23 virtually all of the metropolitan area of surrounding
24 Stockton will be placed back into the floodplain if PAL
25 eligibility is not granted.

1 We are not aware of any fatal flaws or of any
2 performance problems on those systems.

3 So stay tuned. We'll be back, I'm sure.

4 Thank you.

5 PRESIDENT CARTER: Any questions for Mr. Winkler?

6 Thank you very much.

7 Does anybody have any good jokes? We've got a
8 little bit of time to kill.

9 This is one of the downsides to having the timed
10 agenda. When we're ahead of schedule, we've got a little
11 bit of down time.

12 MEMBER BURROUGHS: I have a little bit to share.

13 PRESIDENT CARTER: Okay. Rose Marie?

14 MEMBER BURROUGHS: At the levee conference, we had
15 a wonderful presentation by a whole Dutch group from the
16 Netherlands. And of course, worldwide, they have one of
17 the most impressive levee system and water projects that
18 has been endorsed by the whole country.

19 And the day before yesterday, at an interagency
20 meeting, one of the comments was made that they wanted to
21 figure out what the cost was per person or per home in the
22 Netherlands for their, you know, really expansive and
23 extensive levee system. And they figured that per home,
24 they spend \$175 a year, annually, to support their system.
25 And that here in California, it's \$50, a one-time fee,

1 which I think was also added that it was about the same
2 cost that it is to buy a newspaper for a year.

3 So I think we have a lot of work to do to educate
4 our public on how critical and how important our water is
5 to our state.

6 And one other thing that we sort of hear once in
7 while, but the Dutch also said that they value their
8 agriculture, and that they made a vow that after their
9 horrific flood, that they would not let it happen again.
10 And so they built a nice system that would protect their
11 agriculture and the people.

12 And I just wanted to share a couple other things
13 about some of the thoughts that the Dutch had, which were
14 comments made during the conference, that we were pretty
15 lazy for letting houses being built right next to the
16 levee system. And that there was -- there were several
17 other comments that they shared. And I just wanted to
18 share that with the public today.

19 It was very interesting to get another country's
20 perspective on what we're doing out here in California.
21 And I sure appreciate all the comments about how we have
22 these diverse agencies that have different views on what's
23 important. And they are all important.

24 And I think that's the key of what we're hopeful
25 for with this roundtable is to be able to have a consensus

1 and to really step back and look at what's the most
2 important thing to accomplish in our public safety.
3 Otherwise, we just spin our wheels here in litigation or
4 permitting or, you know, whatever our process is.

5 So I have really hopeful ideas that we can move
6 more positively in the future. And I think the key to
7 that's going to be in the educating the public.

8 Just thought I would share that with you while we
9 have some time.

10 PRESIDENT CARTER: Very good.

11 VICE-PRESIDENT HODGKINS: Along with that, if I
12 could, I would encourage the engineering community, if you
13 can get ahold of the pamphlet that was available at that
14 conference from -- that have sort of a concertorium [sic]
15 of engineering firms that work together somehow in
16 relationship with the Dutch government. And that pamphlet
17 does such an incredibly good job of describing to me
18 their -- you know, their overall program, their idea here
19 of, you know, they cycle through some elements of their
20 assessment of safety every five years and other elements
21 every 25 years.

22 And it just is a model. Even though I'm sure
23 there are significant differences between what the
24 pamphlet says in the real world, even in the Netherlands,
25 the concepts set forth in that pamphlet are, I think, a

1 great model to aspire to here in the state, both from the
2 standpoint of doing the technical work and monitoring the
3 system. I was just really impressed by the Dutch.

4 PRESIDENT CARTER: Very good. Thank you.

5 Does anybody else have anything they would like to
6 fill dead air time with?

7 (Laughter.)

8 VICE-PRESIDENT HODGKINS: Let's deal -- is it a
9 possibility of Ricardo coming back at 1 o'clock to talk
10 about the PAL program? It seems like, to me, he's
11 probably not likely to be here.

12 I think to discuss that program in any detail
13 without the full Board being here is probably not
14 something that makes a lot of sense. Could we save -- and
15 I don't know if it would make any difference to folks out
16 there. Are we through with PAL for the day, or do we want
17 to dig into Ricardo's package if he shows up at 1 o'clock?
18 And if you think about the situation in Texas, I think the
19 chance that he's going to make it is slim and none.

20 I just don't know if anybody's hanging around for
21 that. But I guess I would suggest that we indicate, as a
22 Board, we're not going to go further in discussion about
23 it today.

24 PRESIDENT CARTER: I'm comfortable with that.

25 Rose Marie? Staff? You are comfortable with

1 that?

2 Okay. Very good. Let's take a five-minute
3 stretch.

4 10:30, we'll continue with Item 7 -- unless
5 somebody's watch out there says 10:30 right now.

6 (Thereupon a break was taken in
7 proceedings.)

8 PRESIDENT CARTER: Ladies and gentlemen, if we
9 could take our seats, we can continue with the meeting.
10 We're allowed to proceed at this point.

11 We are on Item 7, Three Rivers Levee Improvement
12 Authority Monthly Report.

13 Mr. Brunner, welcome.

14 MR. BRUNNER: Good morning. I'm Paul Brunner, the
15 Three Rivers Levee Improvement Authority executive
16 director. It's good to be here.

17 What I'm going to do this morning is to go through
18 our monthly report. I do have something that I will talk
19 to at the end, to add on to the monthly report. But it
20 should be pretty brief, as we work through here.

21 A couple of things to clean up before I get to the
22 monthly report is I did -- Jay did send us a letter on
23 behalf of the Board last -- after the last Board meeting.
24 It was a 3 August letter, that I refer to here, asking us
25 for information on four different topics. Don't plan to

1 go over this today; it's a pretty thick package on it.
2 You may want to consider having a subcommittee meeting or
3 agendize it for the next meeting that you have in
4 September, a special meeting. But there's the four items
5 that you asked us about on our last meeting. It's a thick
6 package.

7 When I looked at the agenda and what you had for
8 us here and being prepared to come forward with, I really
9 didn't feel as though we had time to go through all of
10 this with you at that time. So we do have it here.

11 The box down there represents, I think, 8 to 9
12 copies of this full package that we have, what we have for
13 our project, answering those four questions.

14 PRESIDENT CARTER: Mr. Punia?

15 GENERAL MANAGER PUNIA: Just -- I want to refresh
16 the memory.

17 Last Board meeting, Board Member Rose Marie asked
18 three or four questions. And those questions are put --
19 sent to the TRLIA in a letter format, and TRLIA has
20 responded to those questions, and that's the information.

21 MEMBER BURROUGHS: Thank you.

22 MR. BRUNNER: Right. And we had received that.
23 And we had taken the last week, week and a half, since we
24 had that, to put it together, assemble the packages, and
25 put it here. So the information is there, and we're more

1 than welcome to sit down and talk and go over it with you.

2 The -- another item, before I get to the monthly
3 report was we did send out the -- a newsletter. There's
4 copies here too. This is a very recent one that went out.
5 I mentioned this in regards to our outreach program of
6 trying to get out to the folks and let them know what
7 we're doing in our program. And we also posted this on
8 our Web page. So you also have copies of that.

9 Now, turning to the monthly report, if you have
10 that in front of you, what I was going to do is go through
11 and highlight the significant points, particularly those
12 that -- where I had changes from what the report says.

13 Made a little bit of a change to the report this
14 time to make it easier on yourself, and also on me when I
15 go back to review. I try to highlight changes from last
16 time in the italicized and underline. And that helps me
17 when I go back to review too. And I'm sure it will
18 hopefully help you.

19 Where I wanted to go to, to start the updates was
20 really on page 2 -- and on Item B on page 2, which would
21 be 1D, this regards the work that we had done on the
22 Feather River. I think the items on page 1 are pretty
23 straightforward. And unless there's questions, I will
24 just go past those.

25 But on page 2, really starts the discussion on

1 where we've been on the Feather River. And I think --
2 before I start here, I really need to give you kind of a
3 little bit of a recap, here, of some items that -- you
4 heard earlier, I think, in the early funding from the
5 state about where we are in the budget for Prop 1E
6 funding. And we talked about that. We had that contained
7 here a little bit later on, on funding.

8 A major portion of our project is dependent today
9 on Prop 84 and Prop 1E funding coming to our project. You
10 saw that in the subcommittee meetings that we talked
11 about, how we laid it out in the funding to go forward
12 with.

13 We accomplished phases one through three with
14 development funding, same state Prop 13 funding. But
15 we're really heavily dependent upon the state funding to
16 come to our program.

17 This whole discussion with our working here for
18 the Feather, and moving forward, is that I wanted to go
19 through the changes here, because TRLIA is pushing as far
20 as we can, to me, in a position that we honor our
21 commitment with you, the 2008 goal, and also through our
22 residents in South Yuba County, that we are in a position
23 to complete by the end of 2008, not go through another
24 flood season.

25 And as I walk through here, I think you will see

1 that we're doing that, and we're stretching every dollar
2 that we can, that we have in our possession, to leverage,
3 to do that, to meet that goal. We need to have the state
4 funding to complete that goal.

5 We identified that to you earlier on in the
6 subcommittee meetings, and that. The Feather River
7 work -- to put it in somewhat of a context, the Feather
8 River work itself is \$201 million, segments one, two, and
9 three. That transcended, once we made that decision,
10 above and beyond anything that any development plan that
11 we have, or what we were talking about before, offered it
12 up as funding.

13 So once we made the decision to go to that
14 project, to the setback, that really put a course down to
15 do that. And we didn't do that in a vacuum. We did it in
16 due course, looking at what's best for the communities and
17 where we're going to move forward with and all the various
18 benefits that we have, and discussions to this day. And
19 we've tried to share that with you through subcommittee
20 meetings, and that.

21 But we haven't received the funding. We were
22 going to get certain things coming in earlier, but we just
23 haven't gotten there.

24 So let me return to the update, because this is
25 where TRLIA has gone. And my team has really worked hard,

1 and my Board has worked hard to make this happen, where we
2 are positioned to still meet that date if we get the
3 funding.

4 And -- such as, let's go to segments one, two, and
5 three on D1, 1A. There -- I already hit the idea about
6 the funding and the impacts on those three sections.

7 If we go to Item 2, B2, segments one and three,
8 TRLIA Board on August 7th, I made a reference here about
9 us potentially awarding segment three. We did award
10 segment three. We did not have full funding for segment
11 three. But what we did there was create an innovative
12 approach for awarding that contract.

13 We did receive \$2.1 million from the development
14 community. TRLIA did have \$500,000 that I could squeeze
15 out of our budget, as we're working through here, waiting
16 for the state funding, to put \$2.6 million together out of
17 about a \$6 million contract effort, awarded that amount of
18 work. They met yesterday for a construction meeting, and
19 they will start work next week, on some slurry walls to
20 start that phase.

21 I have the authority, the TRLIA Board gave me, to
22 issue notice to proceed, once we get more money to do more
23 work, and proceed through that process. We believe we can
24 complete that work for segment three, that we went with a
25 first notice to proceed against, by the end of the

1 construction season.

2 So we are somewhat constrained with the
3 construction season now. But if not done this year, we'll
4 move to next year and we're positioned to go there and
5 complete that work.

6 Segment one. We also, at times, talked about site
7 seven being included in that. That was originally going
8 to be funded by the Feds, which is now not being funded by
9 Feds. And we're still trying to make that happen.

10 We, last Tuesday, August 14th, went to the TRLIA
11 Board. And without funding to make that happen, another 7
12 to 8 million-dollar effort, got the authority, that I
13 have, that was given to me, to make the award on that
14 contract once we receive the state letter.

15 And we made that contingent upon the state letter
16 because you really never know what's going to be contained
17 in the state letter. There may be catch-22s. And we've
18 asked over and over again, can we at least get a draft of
19 what the conditions can be? And the answer is no. And I
20 understand that. But we're waiting. But we had some
21 concern about what that state letter might say, any
22 conditions. If we award the project, we might not get the
23 credit for the money and how that works out.

24 But we're positioned that once we receive that
25 letter, we can rock and roll. We can go on segment one

1 and make that happen. And we're also positioned to do it
2 next April when the construction season is ready to go.

3 Let me go to segment -- we also received the
4 Section 104 credit letter that's in here, too, that was
5 referenced before. So we have everything in place: the
6 encroachment permit; the Section 104 credit; the 408
7 permit. So we're ready to go and do the work on segments
8 one and three. And we started on segment three.

9 Segment two. What we've done on that is we've
10 pushed as far as we can. We did go out with a meeting on
11 August 10th. Jay made a reference to it in his
12 discussion. And during that time, as we work through
13 that, we believe within TRLIA, from the
14 August 10th meeting, that we should go forward with the
15 advertisement for that project, to advertise it, to stay
16 on schedule, because we still are believing that to meet
17 the 2008 timeframe, we need to be in the ground, building
18 a foundation, in October.

19 We have shared that with you over and over again.
20 Segment 2 is heavily dependent upon state funding. In
21 fact, potentially all state funding for that particular
22 segment.

23 We did put the project out to bid. That happened
24 yesterday. And the -- we put a set of 60 percent drawings
25 out for bid for allowing the contractor to come to work

1 with us. Some of this, you're going to hear more in the
2 encroachment permit next time, when we come before you in
3 September, and go through that. But I'm making these
4 points to let you know, that we are doing everything we
5 can to be in a position to finish this project on time,
6 and what has changed recently in the monthly update.

7 But it's really contingent upon getting those
8 funds. But it is having an impact.

9 We put the project out -- advertisement. We hope
10 to have the bid open in the middle of September, maybe
11 later September, go through the analysis, and then
12 hopefully, if the funding is there and we work through
13 this, on the project, is to start the award, at least on
14 the foundation. So they can start in the October time
15 frame. And that's what I've reported to you before.

16 The other thing I wanted to make reference quickly
17 for you is on the segment one and three work is that you
18 asked us to do the indemnification. And I reported that
19 we put that together. And it was all signed off. I did
20 bring that copy; I gave it to Jay. It was all signed off
21 by the board of supervisors, TRLIA, and RD 784 to
22 indemnify for the work. You have it before you; Jay has
23 it, for Mr. Carter -- Chair -- President Carter and
24 counsel to sign off on it.

25 So I think we've pushed really very far and hard

1 to make everything come to pass. And we're really waiting
2 for the state to make that commitment for our project to
3 move forward on it.

4 The -- back in the July -- June-July time period
5 when we were having the subcommittee meetings, we did have
6 the discussions with the -- about the Prop 1E funds being
7 available. And during that time, we were looking at a
8 schedule somewhere around July time period, for that
9 funding to come.

10 I can see the slides, 10/10/10 for land
11 acquisition from this date and how that would work out.
12 Obviously, that hasn't come to pass on it, for us to move
13 forward.

14 The -- all right. Let's move back to the updates
15 here.

16 I think that really does bring me back to the
17 funding update points, which is on page 3. I do -- I see
18 in my notes I need to go back and hit a highlight on C and
19 D, because it will come up during the questioning, I
20 think. And this is on segment two. We had done land
21 acquisitions, and we've also pushed really hard on land
22 acquisitions also.

23 The -- we, the TRLIA Board, on August 7th did take
24 an action, resolution of necessity, to go forward on the
25 property that is very contentious, on the Rice property.

1 So we did do the resolution of necessity there. We did
2 get acceptance for that. We are hopeful that in some way
3 we'll work through that with the Rice family, but we did
4 take the resolution of necessity.

5 We had funding to do that. That came from
6 internal TRLIA funds to make that happen.

7 Again, we're trying to acquire as much property as
8 possible so that once we get the state money, we can start
9 building the levee work and be in a position to get as
10 much out of the way as possible.

11 We also recently, since the last update, did meet
12 with one landowner and came to terms of agreement, where
13 we don't have to do eminent domain. So we do have the
14 arrangements where we can strike deals with folks and make
15 that happen. So that also occurred since the update.

16 All right. And I believe that from your action
17 that you are taking here is that we will have the
18 encroachment permit discussion in September.

19 On funding, which is on the bottom of page 3, this
20 is one of the action items that we did put in the box that
21 you asked about, gave a recap in this update here. We
22 sent you a letter, July 27th, that I gave the update for
23 where we were on funding. It points towards the state
24 funding and the significant hurdles that we have on land
25 acquisition to go forward with. It also pointed out that

1 three of our participating landowners did withdraw from
2 the program. The dollar amount that they withdraw for the
3 second capital call was the \$1.4 million. That was
4 identified in our correspondence. That is a concern.
5 We've been working with the participating communities to
6 work through this.

7 A much larger concern for us to complete our
8 project is the state funding. I know, I keep on having
9 that repetition. But right now, to complete our project,
10 we -- it's somewhere around 80 percent -- 70 to 80 percent
11 projected state fund. We need to have those state funds
12 to move forward on our project. And once that happens,
13 we're positioned to move forward.

14 The -- let's go to page 4 under building permits.
15 You will see that the building permits for the month of
16 July are fairly flat. We only had 52 permits that were
17 issued, and it remains flat. I think that really reflects
18 the economy. That's in the -- really, in the state of
19 California, definitely in the Sacramento area. That's
20 moving forward.

21 The bad news is that it's flat and the economy is
22 going that way. Good news, not a lot of homes are being
23 built, for those who don't want homes to be built.

24 The last item I wanted to quickly go to that has
25 recently occurred, and I think it's worthwhile to discuss

1 here, to some length, is that we recently have encountered
2 with one landowner about building a fence over the top of
3 the levee. There's a long history on the Western Pacific
4 Interceptor Canal.

5 The -- we've been working back and forth to build
6 the fence or not to build the fence or how to do it for
7 quite a while, myself with Three Rivers and also RD 784.

8 The issue that we have isn't so much about the
9 fencing, although that may be part of it, but whether or
10 not the fence should go up without an encroachment permit.
11 And one of the things we've been talking about is really
12 the encroachment permit needs to be applied for and
13 received before a fence goes up and over this levee.

14 Now, in our discussions with the landowner, there
15 has been a discussion about whether or not if TRLIA took
16 down the fence, did they not take down the fence as part
17 of the construction and the permit conditions that are in
18 the permit?

19 This fence that we're talking about, TRLIA did not
20 take down. It historically has not been on the levee. It
21 may have been there, way past, before TRLIA got involved
22 in the project. But there was some discussion that TRLIA
23 took down this fence. We did not. This is fencing up and
24 over the levee.

25 There is a fence along the toe of the levee that

1 we did take down. And we've offered to replace, and the
2 landowner doesn't want it back up, that particular fence.

3 So where we are today, we've worked with RD 784 to
4 work with the resident. Scott Shapiro and I met with
5 their attorney and the landowner, a month or so ago, to
6 work out a deal about how the fencing would go back up,
7 how it would be aligned to protect the levee.

8 There are cattle involved, that potentially cattle
9 would impact the levee. We feel that that shouldn't
10 happen, just to go up and down the levee. And that we'd
11 have fencing aligned on the levee to put it up and try to
12 strike the deal, how we would do it cooperatively. And we
13 were told, hell, no.

14 And at that point, we had been working through
15 this still, but it's really hard to work through this with
16 the particular resident.

17 So we even have introduced the idea of trying to
18 acquire the property. Some way of working through this on
19 the Interceptor Canal. And you have to have this picture
20 of where the Interceptor Canal is along Highway 70, and
21 the value of the property for grazing of cattle that's
22 there. It's not much.

23 So we did along with RD 784 -- 784 is a
24 maintenance organization. We got word that the fence was
25 going to go up and didn't have an encroachment permit. We

1 asked them not to do that. The -- we did ask the sheriff
2 to come -- RD 784 did. They asked the resident not to put
3 it up. All this was being done in conjunction with Jay
4 Punia. I did talk to Jay on it, back and forth about it,
5 on the permit.

6 The -- I think we're trying to put the genie back
7 in the box, to work through the resident. And I gone
8 through this long discussion, because this morning, I
9 received a call -- my administrative assistant received a
10 call, and called me just before I came in here, that
11 apparently the resident has decided to go ahead and
12 reinstall the fence even though we think that the
13 encroachment permit is dated. And it needs to come from
14 the Rec Board in that regard.

15 And it's needed from our perspective, because
16 someone is working on the levee. Even if the fence was
17 there or not, be historically or not, is that we had just
18 got done improving the levee. And if someone's going to
19 go punch holes in the levee, it should be at least under
20 control. It isn't whether or not the fence is there or
21 not; it's really how it's being done and someone's
22 watching.

23 So with that, I know that the RD 784 -- Carl was
24 potentially going to make some comments about this too,
25 and then potentially Jay, you may have some comments too.

1 So Carl.

2 MR. LINDMARK: Good morning. I'm Carl Lindmark,
3 counsel for Reclamation District 784.

4 I was out on the levee, that section of levee
5 yesterday, conducting part of an investigation. There's
6 one thing I wanted to correct that Paul said. He
7 mentioned something about reinstalling this fence. Okay.
8 I have not verified that there was ever a fence up and
9 over the levee in this area before. Okay. We have
10 remnants of fence in the waterway in that general area,
11 that are perpendicular to the levee. And we have it in
12 several other areas along the levee there. But nothing
13 that goes -- would indicate that there was ever a fence up
14 and over the levee itself. So I just wanted to make that
15 clear.

16 With respect to this, I have spoken personally
17 with the maintenance supervisor from the district. He's
18 been doing maintenance on that levee since 1995, which is
19 well before Three Rivers was ever formed. He's indicated
20 to me, categorically, there was never any fence across the
21 levee in that section of the levee, along Western Pacific
22 Interceptor Canal, at any point, ever since he's been
23 here.

24 I've been informed that the district engineer,
25 Mike Smith, would be able to go back even further in time

1 to when he started working with the district, which I
2 believe was in the early '80s. But I haven't been able to
3 verify that with him because he's on vacation at this
4 point.

5 There is -- we have pulled out the levee logs.
6 There is reference to cross fences in the levee logs at
7 about those mile markers. However, the references are
8 just to cross-fence. There's nothing to indicate that the
9 fence ever went over the levee, up and over the levee.

10 And if you walk that section of the levee, you
11 will see fences that are perpendicular to the levee in the
12 waterway, in the canal itself, but nothing to indicate
13 that there was ever any fencing up and over the levee,
14 across the levee, on to the land side toe and out the rest
15 of the property.

16 That's basically what I've been able to determine
17 so far.

18 MR. BRUNNER: The point of coming was to bring
19 this to your attention, the -- potentially the fence is
20 going up. And we are working with staff, with Jay, on the
21 issue.

22 Jay, did you have anything you wanted to add?

23 GENERAL MANAGER PUNIA: We are checking on this
24 issue. And based upon our search, the permit we issued to
25 the TRLIA, there was a clause in that, that they will

1 reinstall the fence. If they remove the fence, then they
2 will reinstall the fence. If it's the same fence the
3 locals are installing, we are telling them that there's no
4 permit needed. But if they are moving the fence or
5 standing the fence, then we will ask them to submit the
6 permit, and then we will evaluate and issue them a permit.

7 And our legal staff has looked into this. And Dan
8 Fua is working on this.

9 Scott, you may have any other information to
10 share?

11 LEGAL COUNSEL MORGAN: That basically summarizes
12 the nature of the permit. I think generally, the Board
13 would give permits for the fences once they have been
14 taken down or are being replaced even in the same
15 location. But in this case there was a permit that
16 specifically said that Three Rivers would replace fences
17 that were removed in the course of work done pursuant to
18 the permit.

19 And then the next sentence said, if a fence is
20 located in a different position, consult with the Board,
21 the clear implication being that if they are not being
22 moved, you don't consult with the Board. And as
23 suggested, that no permit would be required, including for
24 fences that didn't have a permit already.

25 That's probably not the most desirable situation.

1 But that's what we have with this particular permit. And
2 so, all the discussion here is really a question of fact
3 about what fences were -- where they were.

4 And I don't believe there was a map showing, at
5 the beginning of the project, where fences were that were
6 going to have to be removed and replaced. So it's going
7 to be a he-said-she-said sort of thing, unfortunately.

8 But definitely, the Board does have an interest
9 and would like to see all the fences ultimately permitted,
10 even the ones that are grandfathered in.

11 But -- and I would also like to see work -- see
12 permit applications for work that is outside the scope of
13 this application. But anything subject to this permit, as
14 the permit stands, there's no permit -- other permit for
15 that fence required.

16 MR. BRUNNER: I know, a clarification, our
17 drawings do show a fence to be removed. TRLIA did not
18 remove the fencing up and over the levee. That was not
19 there before the project started.

20 RD 784 maintenance people historically have gone,
21 and they have not seen the fence there. Aerial
22 photographs would show it's not there before we started
23 the project. It may have been there historically, a long,
24 long time ago, on it.

25 The fence that was down, that was part of our

1 project that we did take away, we haven't put it back.
2 But it's not because we haven't offered to put it back.
3 The resident has it on the toe of the levee. It's not up
4 and over the levee, on it. We have offered to put it back
5 up. But the resident has asked us -- really doesn't want
6 it back.

7 So there are different fences that are involved,
8 and it's important as a discussion.

9 We think the permit applies, our permit, Three
10 Rivers' permit, applies to the one on the toe that we're
11 more than willing to put back.

12 LEGAL COUNSEL MORGAN: The permit applies only to
13 the ones -- yeah, whatever is going on out there, I guess
14 there's some confusion about it. But it -- the permit and
15 the ability to restore fences without any further Board
16 action only applies to the fences that were removed
17 pursuant to the activities undertaken with the permit. I
18 think it's 17782 or 17882, one of those.

19 MR. BRUNNER: Even with all that contention, I
20 think RD 784 and Three Rivers is willing to work with the
21 resident. But we think that it should need a permit to go
22 up and over the levee, where it is.

23 Richard Webb from RD 784 also is here and wanted
24 to make a comment.

25 MR. WEBB: I'm Richard Webb with Reclamation

1 District 784. Also, I'm on the Three Rivers Levee
2 Improvement Authority Board as well.

3 The issue here, I think, is very important for me
4 to, from a 784 perspective, to have the support of this
5 Board here, because I was the person that asked the
6 sheriff to go out and asked them to stop. And I did that
7 in the belief that I was protecting the interest of the
8 Reclamation Board. And in doing so, I felt that any time
9 something had to be -- something was being done on the
10 levee, that it needed a permit.

11 And from our investigation, we have determined
12 that there was, as far as the Three Rivers Improvement
13 Authority work that was done on that levee, prior to that
14 work, there was nothing showing no evidence -- no evidence
15 showing. And I had been told there are aerials that would
16 show, that were taken before the work started, that do not
17 indicate a presence of a levee -- I mean, a fence up and
18 over the levee.

19 I think it's essential that a permit be issued or
20 applied for and issued to give 784 an opportunity to
21 condition on there, that we have the landowner's agreement
22 that we can maintain the levee, that we have access to the
23 levee, that we have access not only to the top of the
24 levee and the sides and 15 feet out from the toe of the
25 levee, as you people require. We want to make sure that

1 that is agreed to in a permit or is placed in a permit so
2 that we have that opportunity.

3 Otherwise, we are not certain in any way that we
4 would be permitted to have our normal levee maintenance
5 activities on that section of the levee.

6 So I think it's very essential that we -- that a
7 permit be issued or be applied for, conditioned, and then
8 issued so that we have the ability to maintain that levee,
9 protecting your interests as well as our interests and
10 protecting the people in our levee district.

11 So I want to make sure that you understand that
12 position.

13 Now, we've been told that she has indicated that
14 she intends to go ahead with that construction. And I
15 want to know what you want me to do as your watch dog, as
16 the eyes for this Board. Do you want me to go out there
17 and tell the sheriff to stop, or do you want to do that as
18 a Board? Or do you want me to do nothing?

19 PRESIDENT CARTER: Mr. Punia?

20 GENERAL MANAGER PUNIA: I will represent, we are
21 in touch with Ms. Hofman's attorney. Our position is that
22 they have the authority to reinstall the fence if you took
23 it as part of your permit. But anything beyond that, if
24 they want to install it, then they need a Reclamation
25 Board permit.

1 And we are going to convey firmly to their
2 attorney, whenever we get a chance, that if they are
3 planning to install anything beyond what you took as part
4 of your project, then they will -- then we will require
5 them to get a permit before they can install the fence.

6 MR. WEBB: Okay. And then what are your
7 instructions to me as your watchdog?

8 GENERAL MANAGER PUNIA: I think if they are
9 installing the fence which TRLIA took it as part of their
10 permit, then they have the authorization based upon the
11 condition 45 in your permit. But if they are installing
12 the fence beyond that, then you let us know and we will
13 work with you to stop that work.

14 MR. WEBB: Okay. Thank you.

15 GENERAL MANAGER PUNIA: Scott, do you have
16 anything else to add?

17 PRESIDENT CARTER: Is there a dispute in the facts
18 in terms of whether the fence was preexisting or not?

19 MR. WEBB: Did you say, "Is there"?

20 PRESIDENT CARTER: Is there a dispute in the facts
21 between Three Rivers, 784, the Rec Board, and the
22 landowner as to whether or not there was a fence over and
23 across the levee?

24 MR. LINDMARK: Carl Lindmark, counsel for 784
25 again.

1 At this point, I would have to say, yes. I have
2 nothing that indicates there was ever a fence that went
3 from the waterside of the levee, up, over the levee, and
4 down on to the land side.

5 I don't have anything that ever indicates there
6 was a fence across the levee at this point. So I would
7 have to say, yes, that is dispute there.

8 PRESIDENT CARTER: Except there are cross fences
9 that go to the toe of the levee on both sides?

10 MR. LINDMARK: No, not on both sides. On the
11 waterside, she has fencing in the canal itself. There are
12 remnants of fence there. There's nothing that would
13 indicate that any fencing went over the levee itself.

14 PRESIDENT CARTER: Okay. So -- but they maintain
15 that there was?

16 MR. LINDMARK: She does, yes.

17 PRESIDENT CARTER: It seems like we have to
18 establish whether or not the -- the facts. Somebody needs
19 to decide what the facts are. And that has to be the Rec
20 Board, I think. And then if it's decided that the fence
21 was preexisting, then it sounds like they have got
22 permission to construct it. If it decides it was not
23 preexisting, then they need to get a permit.

24 MEMBER BURROUGHS: Do you have an objection to --

25 MR. LINDMARK: I'm unclear, sir, by what you mean

1 by preexisting. You mean preexisting, before Three
2 Rivers, or preexisting when Three Rivers acted? Because
3 as far as I can tell, at least in recent history, there's
4 never been a fence in that area across the levee.

5 PRESIDENT CARTER: Okay. Then I guess I need to
6 defer to staff in terms of what the exact timing would be
7 in terms of "preexisting."

8 LEGAL COUNSEL MORGAN: The only fences subject to
9 this condition are the ones that were removed by Three
10 Rivers for work done pursuant to this permit. Anything
11 else would require a permit from the Board.

12 MR. SHAPIRO: Mr. Carter, if I might. Scott
13 Shapiro, special counsel for Three Rivers.

14 I really don't want to belabor this item, which I
15 think we've already talked fairly extensively about. But
16 I want to agree with Mr. Morgan. From Three Rivers'
17 perspective -- a rare event, the two Scotts are in
18 agreement.

19 (Laughter.)

20 LEGAL COUNSEL MORGAN: I wish we had a quorum for
21 this.

22 (Laughter.)

23 MR. SHAPIRO: From Three Rivers' perspective, we
24 read the permit condition the exact same way that Scott
25 does. The permit condition speaks generally to fences; it

1 doesn't identify a specific fence or this specific fence.

2 And in 2004, when Three Rivers was created, we had
3 no record that this fence existed. We were in an awkward
4 position of needing to prove to you a negative, the lack
5 of a fence; or the presence of a fence that didn't exist,
6 that's now been taken down.

7 So from Three Rivers' perspective, we think this
8 is a local maintaining agency issue. We obviously have an
9 interest as the one who is going to improve this levee.
10 If a permit is applied for, for a fence, we would probably
11 speak against the fence.

12 We would probably advocate to the Board that there
13 not be a fence here, because we think it would hinder the
14 maintenance of the levee.

15 We also think the purpose of the fence would
16 hinder it. The purpose of the fence is to allow
17 Ms. Hofman to graze cattle on the levee, which we think is
18 a negative. So we would probably speak against it. But
19 we are in favor of the process of Ms. Hofman applying for
20 a permit, if she wishes to put a fence up and a gate up,
21 and then going through the process.

22 From our perspective and the permit condition that
23 Mr. Morgan identified, we don't think the fence
24 preexisted. Therefore, we don't think there's
25 authorization for her to build it. And we are in full

1 support of the Reclamation Board and the RD in taking any
2 action necessary to make Ms. Hofman follow the process.

3 Thank you.

4 PRESIDENT CARTER: So it sounds like the
5 Reclamation Board staff needs to probably get involved in
6 this.

7 MEMBER BURROUGHS: I have a question.

8 Jay, have you talked to the resident yourself,
9 directly?

10 GENERAL MANAGER PUNIA: We are dealing with her
11 attorney.

12 MEMBER BURROUGHS: Okay.

13 And again, for my benefit, the attorney said that
14 they believe they had a preexisting fence?

15 GENERAL MANAGER PUNIA: That's what the -- I think
16 not specifically, but that's what the intent is. Yeah, I
17 think we need to clarify -- I think we are -- when we have
18 a break, we will get in touch with the attorney. We want
19 to make it absolutely clear that what the permit condition
20 is authorizing, that what was removed by the TRLIA. And
21 we are also having a field trip Monday to go to the site
22 and check it out ourself.

23 MEMBER BURROUGHS: Two points were mentioned that
24 for this resident, they wanted to make sure that they have
25 access for maintenance. Has there not been access? Or is

1 there an agreement of -- from the landowner before this
2 project even started?

3 MR. BRUNNER: The -- obviously, the hesitation
4 just displays, there are issues. The -- there are
5 easement issues as to where the easements are. I think
6 access for maintenance has been strained. Currently --
7 and Rich Webb could probably speak to this better on it.
8 But the RD 784 does at times have issues of getting access
9 to it. Construction of our fixes on the Three Rivers work
10 has been strained, at times, for access to the levee.

11 MEMBER BURROUGHS: I also have another question,
12 just to help me understand it.

13 Has this resident owned cattle, had cattle on her
14 own property, over all its duration of time? And can the
15 cattle right now get up on the levee?

16 MR. BRUNNER: Can the cattle get up on the levee?

17 MEMBER BURROUGHS: Is there fencing around the
18 property to prevent....

19 MR. BRUNNER: Currently, there is, in the Western
20 Pacific Interceptor Canal, Ms. Hofman owns the entire
21 property, all the way through the interceptor canal to
22 Highway 70. And we're talking about a little strip of
23 land that runs between Highway 70 and the west bank of the
24 interceptor.

25 There is a canal in the channel that has water in

1 it that's a natural kind of blockage. So the cattle must
2 swim through the canal to swim through the levee to go
3 over -- on it. The -- but there's not a fence along the
4 toe to prevent that.

5 I have talked to Ms. Hofman on several occasions
6 about this, and Mr. Harris. The desire is to be able to
7 have access for the cows to go up in a flood event, to be
8 on high ground on top of the levee, and also have access
9 to go and get to the other side by Highway 70 that's
10 there.

11 But there's not a fence right now along the toe of
12 the levee to prevent the cattle from going up. It's
13 difficult for them to do that. We have offered to put a
14 fence along there to prevent the cows from getting up and
15 allowing them to use a ramp. If there's some ramping to
16 get up and over, we'll work with her on that, but that has
17 not been acceptable.

18 The access issue Scott was talking about with me a
19 second ago, on easements, is, we don't have a toe, a road,
20 of access to get there -- that's of issue -- along the
21 toe.

22 And it also strikes interest for us while we're
23 thinking that the offer was to go acquire. If you go
24 along Highway 70, the land strip there is heavily
25 encumbered with power lines, and that, that are there. It

1 has a lot of easements already. If there's some way to
2 maybe just acquire it, and get this issue passed, and so
3 far that hasn't been acceptable to Ms. Hofman either.

4 VICE-PRESIDENT HODGKINS: Can I ask staff a
5 question?

6 Do we typically allow cattle to graze on our
7 levees?

8 CHIEF ENGINEER BRADLEY: That's kind of a no-win
9 question for me. There are -- you know, the East Side
10 Bypass, there's cattle grazing down there within the
11 bypass and adjacent to the bypass. I don't know the
12 entire system. But I suspect there are other places where
13 the cattle have grazed on the levee.

14 VICE-PRESIDENT HODGKINS: Let me phrase the
15 question a little differently: Would you recommend, from
16 a potential damage to the levee from the cattle, that
17 cattle be allowed to graze on the levee?

18 CHIEF ENGINEER BRADLEY: In general, probably not.

19 But there's a lot of questions here. You have
20 only heard one side. The other side is not represented by
21 counsel. There are the easements that are purchased. It
22 is my understanding that those easements, said, would not
23 interfere with normal ranching or farming operations. We
24 have not looked into this.

25 This is more of a legal question than it is an

1 engineering question. The question is, did those cross
2 fences exist before Three Rivers started their project or
3 not?

4 And we can't answer that. The courts may have to
5 settle this. I don't know how to answer that.

6 We'll -- we're going to make a field trip into the
7 Yuba County area for a lot of things on Monday. We'll
8 take this as one thing we're going to look at.

9 VICE-PRESIDENT HODGKINS: And you --

10 CHIEF ENGINEER BRADLEY: I recommend we not touch
11 this at all.

12 PRESIDENT CARTER: It's not going to go away
13 unless we do, I don't think.

14 CHIEF ENGINEER BRADLEY: I'm not sure what you are
15 supposed to do.

16 VICE-PRESIDENT HODGKINS: If you ignore this one,
17 you might as well ignore them all.

18 CHIEF ENGINEER BRADLEY: Do what?

19 VICE-PRESIDENT HODGKINS: If you ignore this one,
20 you might as well ignore them all.

21 CHIEF ENGINEER BRADLEY: The question is really
22 between the applicant and TRLIA.

23 MR. REINHARDT: Can I respond?

24 VICE-PRESIDENT HODGKINS: I think it's a position
25 we can't get in.

1 PRESIDENT CARTER: I think -- what I would
2 recommend is that staff talk with the applicant, do their
3 investigation on Monday, and advise the Board after that,
4 just so we can move on here.

5 VICE-PRESIDENT HODGKINS: I might advise that
6 TRLIA or RD 784 should put in writing to the Reclamation
7 Board your finding as to whether that's a fence that was
8 removed by your project.

9 MR. BRUNNER: Okay.

10 MR. REINHARDT: Can I make one comment on grazing,
11 Mr. President?

12 PRESIDENT CARTER: Could you introduce yourself.

13 MR. REINHARDT: Ric Reinhardt, Three Rivers
14 program manager.

15 The easement holder is the Sacramento-San Joaquin
16 Drainage District. And Three Rivers and the RD do not
17 have any control over the easement and relationship with
18 the landowner.

19 But with respect to grazing, if we have -- we've
20 changed the language behind this levee. This is now an
21 urban levee. And we have worked, collectively, very hard
22 to implement the program that would improve these levees
23 to an urban standard, 200-year protection. And grazing on
24 urban levees, I don't believe, is an acceptable use or an
25 acceptable action to take.

1 And we've offered to purchase this land. And that
2 is the outcome that Three Rivers is willing to do that.
3 But we want to make sure that grazing does not continue on
4 levees. And I don't know that it has in the past.

5 But that's an action that we want to preclude as
6 we put together and maintain an urban levee system.

7 PRESIDENT CARTER: Just as a comment, I think that
8 before we jump to conclusions about whether grazing is
9 good for rural levees or urban levees, we ought to be
10 doing some investigation. And anybody who wants to come
11 and see grazing on levee, come to the Moulton Weir. This
12 Board member grazes cattle on the levees, inside the
13 levees, and outside the levees. So we can go see if
14 there's, in fact, damage that the cattle or other
15 livestock do to levees as a result of grazing. It's
16 probably an effective vegetation management strategy,
17 inexpensive and whatnot.

18 So before we jump to conclusions, I think we ought
19 to get some real data.

20 MEMBER BURROUGHS: I would like to make a comment
21 to Ric while he's up there.

22 I just wanted to complement you on your tremendous
23 job at the levee conference. And I thought your work was
24 superb and very educational, very informative. Great job
25 on the conference. It was fascinating.

1 MR. REINHARDT: Thank you.

2 MR. BRUNNER: Thank you.

3 PRESIDENT CARTER: Anything else?

4 MR. BRUNNER: No.

5 PRESIDENT CARTER: We have a couple members -- do
6 you have a question?

7 VICE-PRESIDENT HODGKINS: Well, maybe we ought to
8 let the public comment. I would like to talk about the
9 schedule for this project.

10 PRESIDENT CARTER: Mr. Foley, would you like to
11 address the Board on this item?

12 MR. FOLEY: Good morning, Board, and good morning,
13 General Manager.

14 They don't have the money to complete any of this.
15 And it must be involved in the funding agreement. These
16 are your project levees. These are your levees. Under
17 Paterno, you will pay. The state of California will pay
18 if the levees do not meet the design to the design
19 standards.

20 They have no -- you have not asked a question
21 today about their money. The money is not there. So they
22 have a figure of \$201 million. I think the early
23 implementation, however you say that, thing, of 132 or
24 something, this process, the Board knows it best. It's
25 going to get drug out -- you have got to take -- you need

1 to take over this thing.

2 They are in default on their agreements, on the
3 funding agreements. They made an agreement with you in
4 2006 to lift a permit -- the building permit restrictions.
5 They have not -- you know they haven't met -- that money
6 is not met. That money is not there. There's a sum of
7 money promised, capital calls. The landowner is dropping
8 out. So they are effectively in default on their funding
9 agreements. They have to be. And you are the Board that
10 made the agreement.

11 So why is the Reclamation Board not taking action
12 on that, knowing that the money is not there, that default
13 is in effect?

14 And you guys are the Board who made the agreement.
15 There's a \$200 million estimate on that, these one, two,
16 three -- 130. There's no more money there. There's no
17 more. So what is going to happen next year? You are
18 wasting a tremendous amount of time dealing with these
19 people.

20 And if any reach of the project levees break,
21 don't meet the thing, along the Feather River, during this
22 period of time -- you might ask a question today, \$200
23 million, \$300 million, wherever, you have got to get this
24 straightened out today, very quickly. What kind of money
25 are they going to come up with to get this done?

1 That's between 132 and the 200 million that
2 everyone sort of agreed on. They don't have it. Where's
3 it going to come from? And you guys know that. You made
4 the deal with them. They have an agreement with you guys.

5 So I brought this up at the beginning of the year
6 and nothing. It's only become worse. Mr. Riley brought
7 that up. They went south. The agreement is not worth
8 anything. So they are in default on the agreement.

9 So I would highly recommend -- I've been on the
10 scene since 2004. I highly recommend the State of
11 California take an active step in here and take this
12 project over. They have no funding. You are proceeding
13 without funding.

14 Thank you.

15 PRESIDENT CARTER: Thank you.

16 Mr. Rice?

17 MR. RICE: Thomas Rice, owner of Rice River Ranch.

18 Thank you for hearing me, once again here.

19 Ladies and gentlemen, I come to you today to again
20 ask for your assistance in helping the involved parties on
21 the Feather River setback issue achieve a constructive and
22 agreeable compromised solution.

23 My family representation and myself have been
24 working with due diligence and beyond for 15 months to try
25 and achieve such an agreement. But it takes two sides

1 coming to the table in good faith to truly try to reach
2 such a solution.

3 In this time, we have seen TRLIA's schedule
4 continue to slip. They are now finally admitting a
5 three-week slip. And certainly, this is not going to
6 improve with all their issues. And their finances
7 continue to falter. Not only have they been delayed in
8 their hopes for quick LE bond money, but they are now
9 worried about the need to raise matching capital.

10 Indeed, they are so worried that they are now
11 spending more of their scarce available funds on an
12 outreach contract. They recently awarded a contract of
13 about 125,000 to Lucy & Company to help them secure a
14 possible, more favorable, result in a possible upcoming
15 218 assessment district election in the spring of '08.
16 And this, in a county with, likely one of the highest
17 foreclosure rates in the state.

18 Meanwhile, as they've already stated, three
19 developers have pulled out of their funding agreement and
20 taken the money out of their escrow account, an even more
21 uncertainty to their finances and, thus, of course, more
22 risk to the schedule.

23 Now, more than ever, we ask for your help in
24 getting TRLIA to come to the table in good faith to
25 negotiate a workable solution. Now, make no mistake.

1 Their entrenchment in their current approach is not
2 justified by speaking the magic words "public safety."

3 TRLIA has no right to lecture me on public safety,
4 as my family and I are on the front lines should there be
5 any failure. And my family's had to rebuild twice from
6 floods. We get it. I have far more at stake in a proper,
7 safe, solution here than most of them probably ever will.

8 If this was just about safety, we would not have
9 had -- Yuba County would not have had homes built in
10 Plumas Lake.

11 If it was just about safety, these homes would not
12 have been built before the levees were fixed, and
13 certainly, TRLIA and Yuba County would not have changed
14 their plan midstream, in November of '06, resulting in the
15 morass they have now.

16 Even at the most recent TRLIA meeting, on
17 August 14th, buried in their comments before the meeting,
18 they say they believe segment two construction would need
19 to have priority over segment one and three fixes, even
20 though the setback would not see water for another year
21 until the main levee is degraded. And this could leave
22 unfixed sections of one and three for another winter.
23 This is public safety?

24 Soil tests at my property, tests which I was
25 finally able to gain access to with the Board's help,

1 recently -- I thank you for that.

2 Soil tests on my property have shown that it is
3 not foundation that TRLIA was wanting or expecting. It
4 has a high degree of sand, sandy silt, and other poor
5 foundation layers. And copies of this were submitted to
6 the Board for your examination as well.

7 According to the soil type map, the tests on my
8 property, particularly the deep boring on the south end,
9 should have been significantly better. We continue to
10 wonder whether the map was based -- their soil type map
11 was based upon the alleged "shelf," which we have
12 documented to them. My wife's grandfather, who used to
13 own the land, pushed up there to help have level land for
14 flood irrigation.

15 This is not new information. TRLIA has known all
16 of this long enough, they should have reexamined their
17 approach months ago. It's incredible to me that this
18 situation was certainly known to TRLIA from their earlier
19 tests, which was done on the 2nd and 3rd of May, while at
20 the 23rd meeting of May they had with me, and at the
21 presentation they made on June 8th to this Board. They
22 are presenting the soil type maps as if there were no
23 doubts or issues.

24 The second set of tests was performed on my
25 property just before that meeting, on the 21st and 22nd of

1 May. And yet a third set of tests, on the 29th of June,
2 shows that they have -- aware of the issues, aware of the
3 problems here, and have had sufficient lead time to
4 realize the problem and start working toward a compromised
5 solution.

6 Ladies and gentlemen, we need a balance here, a
7 balance of public policy and a balance in proper process.
8 Such a balance is possible, as we've seen in the southern
9 portion of setback, where they've made better balances in
10 examining the soil types versus the land use.

11 Mr. Brunner himself, in an August 11th interview
12 with the Appeal Democrat admitted that a compromise
13 solution is possible -- I believe that information has
14 been provided to the Board -- and that the only excuse
15 they are giving again is schedule and funding. We
16 appreciate their schedule issues. We want to see those
17 things fixed. We appreciate the funding issues.

18 But we believe that a constructive compromise
19 solution here would actually improve the situation. We
20 believe that from everything, from their 218 election
21 risks to access and availability, that we do better for
22 all parties involved here by getting to the negotiating
23 table in good faith to find an acceptable solution that
24 helps preserve family farms.

25 TRLIA's strategy of stonewalling against

1 meaningful negotiations on this land usage and operation
2 of the farm has been so that they can claim, at the end,
3 that their hands are tied by schedule.

4 If this Board were to strongly signal to TRLIA
5 that you expect a compromise, that agreement could be
6 reached quickly, perhaps this afternoon, perhaps Monday,
7 when folks are in Yuba County.

8 I am willing to come to the table to look at
9 compromise solutions in good faith, solutions that
10 preserve our farmland, give us safe levees. And try and
11 finally resolve this issue.

12 Thank you. I will take any questions.

13 PRESIDENT CARTER: Any questions for Mr. Rice?

14 MEMBER BURROUGHS: I wanted to thank you for the
15 information you provided for us this month. That was very
16 well done. I wanted to ask you two questions: Have you
17 thought of what solution would work for you? And have you
18 had the opportunity to share that with anyone?

19 MR. RICE: Yes, I've had several things I've
20 looked at. Because again, it's not going to be something
21 that makes everyone absolutely happy. I believe there are
22 reasonable judgments that could be considered to the line,
23 the center line. I think there are things that could be
24 done, looking at the particular types of designs, the
25 slopes, the toe locations. There's much that could be

1 done, looking at the way in which the right-of-way and the
2 encroachments are done there. They are leaving a huge
3 margin there.

4 And I do not -- my trees do not walk on the
5 levees. They don't do anything to the soil. They are
6 quite -- my irrigation and my practices are quite
7 compatible with being close to a levee. None of these
8 alone is going to be a perfect solution. But if we get
9 people sitting at the table who are expected to find a
10 solution, a combination of these could probably preserve a
11 significant portion of the farming.

12 Every time -- we've had several meetings with
13 TRLIA. I would grant them that. The only thing that has
14 been in interest of negotiation has been price. I have
15 brought these things to them in our first meeting. We met
16 at my engineering office in Agilent. I asked about
17 alternative encroachments, alternative usage. I asked
18 about different ways we could do alignments, and I have
19 never gotten a positive response back. It's been
20 one-sided.

21 PRESIDENT CARTER: Have there been any -- you
22 mentioned about the foundation material, where the
23 proposed alignment is. It doesn't appear to be any better
24 than others. Have there been other Corps samples taken in
25 either an easterly or a westerly direction?

1 MR. RICE: Not according to the maps that I was
2 provided when that material was sent to me. And I did
3 request that those be done. I suggested particular
4 locations and brought that to this Board as well.

5 PRESIDENT CARTER: Okay. Is there any reason to
6 believe that the foundation is any better to the west or
7 to the east of the proposed alignment?

8 MR. RICE: You are always going to get changes.
9 Probably going to be slightly better as you continue to
10 move to the east, is slightly worse as you move to the
11 west. I don't think you are going to see any strong
12 foundations.

13 I do know one feature out there is if you are
14 looking to about 100 to 150 feet to the west, you have a
15 roadbed there that has been packed for many years with no
16 undercutting utilities, irrigation, piping, and so on,
17 compared to farmland that has been ripped, has hidden
18 piping; some of my land has hidden, old, concrete piping,
19 of three-foot diameter. I have no idea where it is. It's
20 from many generations ago.

21 So from even a risk factor, there is a very
22 natural break point, a very natural feature there. This
23 certainly should have been considered as a better,
24 possible, center line. Doesn't perfectly preserve my
25 property. But looking at that, in conjunction with these

1 other things, there's probably a compromise use that's
2 possible there.

3 PRESIDENT CARTER: And have you discussed those
4 with the applicant?

5 MR. RICE: I discussed that in our earlier
6 meeting. When they came to my Agilent office, I presented
7 possibilities. I've never gotten feedback.

8 PRESIDENT CARTER: So they didn't have any comment
9 one way or the other?

10 MR. RICE: No. The only comment I had on that was
11 later in the year, when their initial right of access was
12 expiring, and they wanted to renew the right of access,
13 which we were able to successfully negotiate, I was
14 initially hesitant to renew that right of access, because
15 they had not responded to any requests and considerations
16 or actions from that earlier meeting. And when I
17 expressed that hesitation, their immediate response was,
18 "Well, if we don't get the right of access, we'll just
19 take it to court," not a, "I'm sorry, we should have
20 looked into that and gotten back to you."

21 PRESIDENT CARTER: Thank you.

22 Any other questions for Mr. Rice?

23 Thank you very much.

24 MR. RICE: Thank you for your time.

25 PRESIDENT CARTER: Does Three Rivers wish to

1 comment on any of the public comments?

2 MR. BRUNNER: If you have questions I will come
3 up.

4 PRESIDENT CARTER: Mr. Bradley?

5 CHIEF ENGINEER BRADLEY: I'm unclear as to
6 whether -- what the escrow account that Three Rivers is
7 supposed to have accumulated based on the landowner drafts
8 and that this Board approved as part of lifting building
9 restrictions, I think around May or June of 2006. Are
10 they on schedule with that? Are they in default? Are
11 they in potential default?

12 If they are in potential default and know they
13 are, they have not notified us. They have three days to
14 notify us in writing that there is a potential for
15 default. So I'm unclear as to the status of the funding
16 that's available.

17 My understand is that they have enough funding to
18 do the repair of the Feather River levee in place, not
19 including the setback that segments one and three work
20 that is proceeding now -- should have been funded with
21 their fees that they were able to obtain under the
22 implementation agreement.

23 So I'm just unclear. And I think the Board should
24 understand this.

25 VICE-PRESIDENT HODGKINS: I would agree with you,

1 Steve. It is not clear to me where we are. And I think a
2 significant portion of that has to do with the uncertainty
3 associated with the availability of funds and from the
4 state.

5 And I think there's probably not much question,
6 were it not for that state bond money, the cost of this
7 project has gone up to the point where it would be in
8 default if it wasn't the potential for state bond.

9 So I think we're -- I personally think we, as a
10 Board member, are going to be interested in knowing what
11 the schedule and cash flows of the project are as soon as
12 we know what the state funding is. I have sought
13 personally and whether there's any benefit to the public
14 at large and to the public safety at large by, in effect,
15 going forward and potentially finding default, and then
16 dealing with the fallout of that from the standpoint of
17 seeing if the county stops issuing building permits. And
18 try to figure out which one makes the most sense in the
19 long term from a public policy standpoint. And the answer
20 isn't obvious to me. It certainly -- building permits are
21 being pulled and more houses are moving forward. On the
22 other hand, if you pull the -- if you trigger a default --

23 CHIEF ENGINEER BRADLEY: This was not -- this
24 implementation agreement was not dependent upon state
25 funding. It occurred before there was a state bond act.

1 The question is, could they do the work that they
2 were supposed to do without the state bond funds? If they
3 can't, then I would assume they were in default unless the
4 costs have gone so high they have raised the money they're
5 supposed to. But the costs could still have exceeded
6 that. So they may not be in default and still unable to
7 proceed with the project without state funding.

8 But it is unclear to me as to what the status of
9 that is. But this project and the lifting of the building
10 moratorium, or agreeing to allow it to be lifted by the
11 Board, was not dependent upon the state bond. It was
12 dependent upon them being, Three Rivers, being able to
13 raise the money that they had projected, which was at
14 least as of agreement that we accepted in May of 2006,
15 \$135 million, total. As of right now, there should be
16 \$60 million in escrow account minus whatever they have
17 spent out of that. There's another \$20 million that's due
18 in October of this year. And then the other, the other
19 55, if needed, was to be called in 2008, March of 2008.

20 VICE-PRESIDENT HODGKINS: Okay. When is it
21 supposed to start?

22 CHIEF ENGINEER BRADLEY: October of 2007. And
23 that would be a \$20 million call. As of the fall of this
24 year, they should have \$80 million available for this
25 work. There was, I believe, about \$20 million that was to

1 be out of that, that went to the phases one, two, and
2 three work.

3 VICE-PRESIDENT HODGKINS: Well, you know, I think
4 that's certainly a question the Board can deal with. And
5 the issue here really, from my standpoint is, in terms of
6 public safety, are we more likely to achieve the
7 improvements if we let this thing be stretched here, so
8 that we do have the potential at least for them to be able
9 to go forward and finish the project if not in 2008, then
10 2009? And perhaps, that's something the Board wants to
11 address. I think it's a question that we need to address.

12 MEMBER BURROUGHS: I have a couple of comments.
13 I'd like to first say that the Reclamation Board, we say,
14 over and over again, our highest and foremost priority is
15 public safety. And we need to be a team together with
16 TRLIA and the community to get this project done, as Butch
17 said. But on the same token, we need to be able to work
18 honestly with integrity.

19 Now, we just received the report from TRLIA and 3B
20 was not firmly mentioned. I thank Mr. Rice for bringing
21 it to his report, but -- as well as Mr. Bradley. That the
22 funding is a major concern and we need to discuss it
23 openly and honestly. And we need to be open to working
24 together, collaboratively, to make sure that we ensure
25 this project be held to the utmost expeditious way to

1 provide public safety.

2 Those are my comments.

3 I would like to know from TRLIA -- I'm going to
4 jump around on two things. One is about the funding we're
5 talking about currently. But also in Mr. Rice's comment,
6 do you have the interest to work with Mr. Rice in a
7 meeting of collaboration to be open to discussing his
8 concerns?

9 MR. SHAPIRO: Mr. Carter, if it pleases you --
10 Scott Shapiro, special counsel. I've taken notes on a
11 series of questions from Mr. Bradley and Mr. Hodgkins and
12 Ms. Burroughs. And I can try to go through them.

13 PRESIDENT CARTER: Please.

14 MR. SHAPIRO: Let's start with Mr. Bradley's
15 question of whether Three Rivers is in default. It's our
16 view that we're not. We said that explicitly in the
17 letter that was sent from Three Rivers to the Rec Board in
18 which we informed the Board that we are having challenges
19 associated with the delay in state funding, in which we
20 explicitly told the Board that the three landowners
21 approved for the program totaling about \$1.4 million.

22 We continue to believe we're not in default. Let
23 me try to approach that from both a macro and micro
24 perspective. I don't have the agreement in front of me.
25 And I'm happy to have this conversation in more detail

1 with Mr. Morgan or Ms. Finch, who was here a moment ago.
2 We've actually talked about the default issue in the past,
3 and we're happy to continue to have the discussion.

4 I view the implementation agreement as really
5 having a macro and micro view of default. The macro view
6 is, we're not going to keep building houses if we can't
7 get the project done. I think that's been really clear.

8 And the micro view is we're not going to let
9 individual developers build houses that aren't
10 contributing to the program, because we want to motivate
11 positive behavior of contributing to the program. On each
12 of those levels, we do not believe we're in default.

13 On the macro view, the question, as Mr. Hodgkins
14 said is, what's the state number? Mr. Bradley's right; we
15 did have \$135 million commitment. But Three Rivers
16 selected an alternative -- the setback levee, which is a
17 \$201 million project.

18 So technically under that, you might have said
19 that in February of this year, Three Rivers was in default
20 for selecting a project that was \$70-some million more
21 than the money we had lined up. But Three Rivers took the
22 position, and the Board, I believe, has agreed with it or
23 at least acknowledges the position, that that difference
24 is made up by, hopefully more than made up by, the state
25 through LE funding. And we continue to be held up by the

1 state budget, which has limited our ability to get that
2 state funding commitment.

3 That state funding commitment coupled with what
4 developers are left equals a total number. If that total
5 number is less than 201 million and we don't have other
6 local funding, we're in default. If we have more than
7 201, we're not in default. That's the macro level.

8 On the micro level, there were those three
9 landowners who withdrew from the program. Within a day of
10 that happening, within a day of us being notified of it
11 happening, we sent a letter to the county saying, "Don't
12 issue permits for these landowners associated with the
13 money they have withdrawn." It's the micro issue. There,
14 you shouldn't be building houses associated with money
15 that they are now taking back.

16 So at the micro and the macro level, we believe,
17 we're not in default. Those are not technical definitions
18 as used in the agreement. I'm happy to go through that
19 with you at length after talking with Mr. Morgan. But
20 that's the way I think conceptually about it.

21 Steve spoke about the fact that we should have had
22 \$80 million in escrow and why aren't we receiving. Steve,
23 your comments are based on the agreement itself. The
24 agreement allows for modification to cash flow schedule.
25 The cash flow schedule has been modified at least once,

1 potentially two or three times, since the agreement was
2 adopted. We provided notice to the Rec Board every time
3 that that's happened. It's actually -- a copy is included
4 in some of the attachments that Paul submitted to do as
5 well as its change.

6 And, in essence, the reason that our cash flow
7 schedule has changed, as we said, there's no reason to
8 have millions of dollars sitting in an escrow account
9 where most of the developers are literally borrowing the
10 money to put it in there, and we don't have something to
11 construct right now. We don't have a permit for segment
12 two yet. Okay?

13 We are proceeding with segment three. We do have
14 money in escrow, right now, that in theory could cover all
15 of the segment three. The issue is, where are our
16 resources best spent? We don't think that segment three
17 or segment one are our weakest link; segment two is. But
18 before we invest millions upon millions and millions on
19 segment two, we are waiting a little bit more to get that
20 state funding letter.

21 We are doing our best to continue with land
22 acquisition and moving it along. We, frankly, had
23 proceeded to notice with the Rices because of the issue.
24 We expect that to be a contentious condemnation issue, so
25 we need to give it more time so it doesn't slow us down.

1 Ms. Burroughs, I will get to your issue in a
2 moment, about working with the Rices. But there isn't \$80
3 million in escrow, because the agreement doesn't currently
4 require there to be, because cash flow schedules have been
5 modified and notice has been provided over the months to
6 the Rec Board on that.

7 The third issue -- Ms. Burroughs, I will disagree
8 with you on the issue of open and honestly not disclosing
9 the funding issue. We sent the letter to the Board. We
10 included in the monthly report to the Board that we had
11 landowner withdrawal. It was included in the packet
12 handed out today.

13 And Mr. Brunner explicitly stated today that we
14 had landowner withdrawal for the amount of \$1.4 million.
15 I know it's in the records, but I was taking notes, and I
16 heard it myself. It may not have caught your ear because
17 of the context it was in. And for that, we'll make it
18 clear in the future. We apologize.

19 But we had been very open about this funding
20 issue, and even to the point of sending an unsolicited
21 letter to the Rec Board to make sure that you were aware
22 of these funding issues.

23 Finally, on the issue of interest in working with
24 Mr. Rice, I can only relay to you my sense of our board,
25 because ultimately, I don't make the decision. We made a

1 presentation to our Board about three or four weeks ago, I
2 think it was, where we summarized for the board a lot of
3 material that we have developed, having our consultants go
4 and looking at the issues that Mr. Rice has raised. And I
5 may even go so far as to agree with you, that maybe we
6 haven't done as good a job as we should have in sharing
7 the results with Mr. Rice.

8 But we have heard what you've been saying. We did
9 move the alignment once, 75 feet, back in February --
10 90 feet in the February time frame. I know that doesn't
11 come even close to beginning to address his financial
12 issues associated with that property. And with that, I
13 can't say anything beyond that. We have moved it once.

14 We've done a lot of work. There's a lot of
15 alignment analysis that's been prepared and presented to
16 Mr. Punia and Mr. Bradley. It's been presented to DWR.
17 And we went to our Board and we said, "Here is our
18 conclusion. Our conclusion is that it would not be a good
19 thing to address the alignment, that adjusting the
20 alignment has potential negative public safety issues, and
21 has definite, absolute, timing issues. Do you want us to
22 come back for the board to reexamine the alignment? And
23 the Board decision was no, we don't want it to come back.

24 So what I can tell you is, is I think staff is
25 very willing to be able to continue with Mr. Rice to talk

1 about other creative solutions. We've talked so far
2 amongst ourselves as to say, can we physically relocate
3 his orchard? Are there technologies that would allow us
4 to move those trees? Could we lose the trees but save the
5 soil? Can we relocate the soil to a place where you could
6 have a good orchard? Because he has claimed it's some of
7 the best soil in town out there.

8 If the Board wants us to look at smaller
9 easements, we'll look at them, although we've generally
10 been very supportive of having a proper easement for
11 future work.

12 So we are willing to meet and willing to work.
13 But at the moment, our board's position is that the
14 alignment should not be adjusted.

15 I hope that answers your question.

16 MR. BRUNNER: It wasn't in my report, but it is in
17 the documents here on the alignment. During the 10 August
18 meeting, we did talk alignment at length.

19 The Corps of Engineers is concerned about the
20 alignment too. They are concerned from a different
21 perspective. They would rather have more of the alignment
22 on the better soil and move the levee to the east. That
23 would impact more of Mr. Rice's soil.

24 They made a recommendation on an area southerly,
25 that we're considering where we are in that regard of this

1 property. We're on a small area of the levee. We may or
2 may not be able to adjust for that.

3 The Corps is okay, in their discussions with it,
4 leaving it where it personally is. But they were not
5 happy with the idea of trying to move the levee to the
6 west to accommodate where we are, to get off the property.

7 That's in the documents, there, that we turned in.
8 Didn't go through it here with you in that discussion. I
9 think that's a discussion that we are going to have later
10 on during the encroachment permit and what we work through
11 in those discussions.

12 But there is another third party in the
13 discussion, too, about the alignment. And we're hoping to
14 have that discussion when we have the encroachment permit
15 or an earlier meeting. We're open to working with
16 Mr. Rice on it. And the -- we always could do better.
17 But we're open to working with Mr. Rice and come up with
18 an alternative.

19 Today was the first time that I've actually heard
20 in the discussion that the levee could actually stay on
21 the property with adjustments, and that, that we went
22 through, and have less impact. It's always been presented
23 to us that we would move the levee 340 feet or some
24 distance off the property on it, to go through. I think
25 with that acknowledgment, that, gee, there are

1 accommodations -- we're looking at right-of-way and how to
2 accommodate, if we can adjust in that. But if we stay in
3 good soil, then I think we would be closer to being able
4 to reach an agreement.

5 MEMBER BURROUGHS: Do you support agricultural
6 practices right next to the levee, up to the levee?

7 MR. BRUNNER: Well, we have various issues there
8 on -- I'm going to defer really, deflect back to what the
9 Rec Board desires. And we had discussions about easements
10 and flood protection and how much we have. We have a
11 wider swath from the toe of the levee, about a
12 hundred-feet easement that we've required, for drainage
13 ditches that have to go along the toe, plus flood
14 protection and trying to maintain flood fighting
15 capabilities along the toe of the levee.

16 So we're open to working with the Rec Board and
17 what those easements would be and how to accommodate. But
18 you have those easements for a purpose. But we're open to
19 working with you.

20 MEMBER BURROUGHS: Okay.

21 Two things: First, I would like comment from our
22 attorney and also our staff. Worst-case scenario,
23 something happens and TRLIA disappears or loses their
24 funding or whatever. Just what if. Where -- or what
25 thoughts have people had about finishing this project if

1 TRLIA disappeared, right now, today?

2 And then to be thinking about it, my second
3 question is answering the question or finding the policy
4 or the procedure to find out if, in fact, there is a
5 default with the funding notification of one-day notice,
6 and whether or not the funding is there or not.

7 Thank you.

8 LEGAL COUNSEL MORGAN: Well, I will start off and
9 then I will let Steve come in. I am going to start with
10 the second part of it, with the default. I think the
11 default is a self-reporting requirement, that Three Rivers
12 has. And Nancy Finch has been working with Scott Shapiro
13 to address this issue and understand it and bring it to
14 the Board.

15 And I will be glad to join in that conversation
16 and look at it. I think that Mr. Shapiro accurately
17 summarized the requirements that Three Rivers had, and
18 then we would have to go back and look at the exact
19 agreement to make sure that we agreed with them.

20 But I believe that he's correct. He correctly
21 stated, Three Rivers' obligation that if there are certain
22 thresholds and they have met them, they are not in
23 default. There's potential that they would be in default
24 in the future, and then they would be obligated to advise
25 the Board. And then the Board would have a decision to

1 make. And basically, the same decision point that was
2 made a year ago, which was stop development pursuant to
3 the agreement or have a new agreement that allows
4 development to go on and understanding they have been in
5 default. So that would be a choice that the Board would
6 have to make.

7 With -- and I don't know if that answered your
8 question or not. And Steve can add something to that and
9 Mr. Shapiro as well.

10 With regard to the first question, I would really
11 rather not speculate. I don't believe, unless Mr. Shapiro
12 answered what the likelihood of that Three Rivers would go
13 away tomorrow is, I think it's -- well, it will go away at
14 some point. But probably not tomorrow, not in the
15 foreseeable future. So I don't think we have to worry
16 about it going away.

17 I think the potential for it perhaps entering the
18 field of default is greater. And I think the chances of
19 it disappearing altogether are small. And so I think it's
20 kind of too hypothetical. But Steve probably knows the
21 status of any federal investigations for projects that
22 would be working out in the area. If Three Rivers just
23 disappeared overnight, at some point in the future, who's
24 going to take up the slack and who's going to do the work?
25 And I will let Steve talk about any federal projects and

1 Scott Shapiro as well.

2 CHIEF ENGINEER BRADLEY: Yeah, if Three Rivers
3 does disappear, for any reason, the project would probably
4 eventually get built. It would not be built immediately.
5 There is a Yuba Basin project in which the Board is the
6 nonfederal sponsor for, at least at the moment.

7 And so it would probably eventually get done. It
8 probably wouldn't get done at the time frame we're looking
9 at now.

10 I believe Mr. Shapiro answered my questions. I
11 had questions of whether they could do segments one and
12 three. And I believe he said they have enough money to do
13 segments one and three. I was not referring to Segment 2,
14 which is a setback levee. And we knew that that was going
15 to be much more expensive to implement if they had to go
16 with the setback and cannot be done without state funds.
17 And I understand that. That was not the intent of my
18 question.

19 I think the real problem to me here is that the
20 Board agreed to removing a condition of the permit that
21 allowed the county to lift the building restrictions based
22 upon a settlement agreement with a certain cash flow.
23 Now, I presume, as Mr. Shapiro is discussing within that
24 agreement, it allows that cash flow schedule to be
25 revised.

1 But you are not a party to -- you are not a
2 signatory to that agreement, so you get left holding the
3 bag. They could actually presume -- revise that schedule
4 to zero. You would have lifted the permit on the -- the
5 condition on the permit in reliance upon the schedule
6 that's in disagreement, and subsequently, that cash flow
7 schedule could be modified and, I believe, has been. So
8 you made a decision based on one cash flow that is now a
9 different cash flow, if I understand the cash flow right,
10 which I probably do not.

11 MEMBER BURROUGHS: Thank you.

12 PRESIDENT CARTER: Mr. Shapiro?

13 MR. SHAPIRO: Thank you. I think the questions
14 have pretty well been answered.

15 I guess I want to put some specific details on the
16 Yuba Basin project. For example, they are talking about
17 trying to get a report by 2009, which would mean, once
18 that report was final, then you try to get it in the next
19 Water Resources Development Act that congress would pass.
20 And assuming it's an authorized project, then you would
21 seek federal appropriations in the order of \$200 million.
22 And with any luck, that would get appropriated over the
23 next 10 or 15 years. So that's the alternative time frame
24 on the federal project.

25 Ms. Burroughs, I think you actually asked a very

1 interesting question which is, what happens if Three
2 Rivers goes away? Or maybe I will take Mr. Morgan's
3 alternative interpretation, which is, we don't have the
4 money; we're in default.

5 The real question here is, how do we get it done?
6 Despite accusations to the contrary, in the past, Three
7 Rivers is not actually in the business of building homes.
8 We are not pro-development. We're pro getting the levees
9 done. And we found that development is the way of getting
10 the local share.

11 And so if you assume that there will eventually be
12 enough senators to pass the state budget, then at some
13 point, DWR will start allocating money the populace has
14 allowed to be spent on levees. This is obviously a prime
15 area to spend some money on levees. We got a population.
16 We got a project task done. Let's get it done.

17 The state requires a local share. So the key
18 question is, if the feds were going to take ten years and
19 we weren't in the picture, would the state want to get the
20 project done? And the question still comes back, where
21 are you going to get the local share? And so that's
22 really what our role is. Three Rivers' role is to keep
23 the project moving and to get the local share.

24 And the real request about default is, do we have
25 a local share? I mean, that's what it comes down to. The

1 state has some amount of money. They are going to give us
2 a dollar or \$200 million. If they give us \$200 million,
3 great; if they give us a dollar, we have a problem.
4 Somewhere in between is what it's all about.

5 And so as we try to get a local share lined up,
6 your question is, do we have a local share? And my answer
7 to you is, how big is the local share? No one's told me
8 what the state share is yet. And that's what the delay
9 has been. That's been the difficulty in giving the kind
10 of definitive answer that, I think, Butch would like.

11 Are you in default? Well, I don't know. What's
12 my local share? Because I haven't gotten the state award
13 letter yet. And my belief is, if we get a state award
14 letter at the level that we have asked for money, we
15 absolutely have the local share.

16 And my belief is, if we get \$40 million from the
17 state, we don't have the local share. And we hope there
18 will be enough senators to pass the budget, we get a
19 letter from the state, we get a number, and then we say,
20 okay, here's our local share. Guys, do we have it? And
21 we go to -- we shouldn't forget the developers who didn't
22 default. The ones who are out there are still saying, "I
23 want to fund." Let's -- my view is, let's not punish them
24 and make them go away and not get their money. Let's get
25 their money so we have a local share and get the project

1 done. So that's a little bit of Shapiro philosophy, I
2 guess, but maybe it's a useful perspective.

3 PRESIDENT CARTER: Any other questions?

4 I wonder if we -- this levee line issue is a big
5 question mark for me. I wonder if we shouldn't have a
6 subcommittee meeting between now and the next Board
7 meeting to hear the results. We don't have a whole lot of
8 advance information on the levee alignment and where
9 people shake out on this. And we're going to be expected
10 in September to make a decision on that.

11 What do you think?

12 MEMBER BURROUGHS: I think that's a great idea.
13 But I didn't know that we could take any action today.

14 PRESIDENT CARTER: We can't take any action.

15 MEMBER BURROUGHS: In forming a subcommittee.

16 PRESIDENT CARTER: We have a subcommittee in
17 place. We can request staff to set up a staff meeting.

18 MEMBER BURROUGHS: That would be great.

19 VICE-PRESIDENT HODGKINS: I think -- would it be
20 fair to ask Mr. Rice about what TRLIA said? And if I can
21 paraphrase what you said is, you are willing to work out
22 some sort of a compromise as long as you don't have to
23 change the alignment of the levee; is that correct?

24 MR. BRUNNER: Yes.

25 VICE-PRESIDENT HODGKINS: Okay. That's what I

1 thought.

2 Is there anything that you think would be helpful
3 and might help you reach an agreement without changing the
4 alignment of the levee?

5 MR. RICE: Thank you.

6 Well, I don't believe that modest adjustments to
7 the alignment should be entirely off the table. There are
8 things that can be done. As I say, there's not going to
9 be a one-size fits all or one solves the whole problem.

10 I believe there are things that could be done in
11 looking at the type of design they have, in looking
12 especially at their easements, and looking at other ways
13 in which we can salvage or adjust the value of the
14 farmlands there. This is about preserving agricultural,
15 preserving the value of what we provide there.

16 It is not monetary. Obviously, there's going to
17 be monetary discussions as this goes forward. But this is
18 about preserving family agriculture. So I am open to
19 proposals and ideas. So far, what I have seen in the
20 discussions -- and I have to beg to differ with their
21 90-foot adjustment. That was never presented to me. They
22 may have it in their records. It was never presented to
23 me before the May 23rd meeting.

24 I have seen the design go from the rough, initial,
25 discussions I had from the first PRI contact, when they

1 made their changes, was about 60 feet. And it was about
2 200 feet. Then it was 5 acres. Now they are taking the
3 whole six acres. I'm sorry, folks. It's only been
4 creeping east.

5 So if they can come back with a legitimate
6 proposal -- and of course we would have to move it through
7 all the proper counsel. But we can work engineer to
8 engineer to look at alternatives to look at ways of
9 maximizing how much farmland can be preserved. Yes, I am
10 willing to come to the table with them. I have been.

11 MEMBER BURROUGHS: That's good.

12 VICE-PRESIDENT HODGKINS: Well, I -- I was trying
13 to get a flavor for whether we're, as a Board, going to be
14 dealing with the issue of changing the alignment or
15 otherwise trying to help. I'm not sure if we got an
16 answer to that. It may be neither here nor there.

17 But, you know, I certainly am open to having a
18 subcommittee meeting focused on the alignment issue before
19 the next Board.

20 Is that acceptable to TRLIA?

21 MR. BRUNNER: I'm sorry. I didn't hear your
22 questions.

23 VICE-PRESIDENT HODGKINS: I understand.

24 Could we have the subcommittee meeting focused on
25 the project alone, and you be prepared and work with

1 Mr. Rice and coming forward and telling us where we stand,
2 and he will give us his reaction to that, which you
3 previously heard, say, by first week in September?

4 MR. BRUNNER: I think that's doable. I would make
5 a request that a member of the Rec Board staff, perhaps
6 Steve, participate in that discussion with us -- engineer
7 to engineer -- as we worked through the prior two
8 meetings. We could have a third party from the Rec Board
9 involved in those discussions.

10 VICE-PRESIDENT HODGKINS: I think that might be
11 useful.

12 Steve?

13 CHIEF ENGINEER BRADLEY: Well, I want to point
14 out, there's more than just Mr. Rice and TRLIA involved
15 here. We still have not heard from DWR on their
16 preference of the alignment of the setback levee. We have
17 not heard from the Corps of Engineers. You heard this
18 morning that the Corps was looking at maybe even moving
19 further eastward on to the better soils. I don't know
20 what DWR thinks. They haven't addressed that question.

21 I would like -- from my point of view, I think we
22 ought to have that addressed before it comes to the Board
23 for decision.

24 These are actually issues that are for -- you
25 know, I don't know if you need to work this out in

1 subcommittee or if it's an issue that needs -- all the
2 Board members need to hear. I don't know.

3 But I think there's more issues than just
4 Mr. Rice, the disagreement between Mr. Rice and Three
5 Rivers. Like I said, there's this Board, DWR involved in
6 this.

7 PRESIDENT CARTER: I think the reason I suggested
8 the subcommittee meeting was that I want to try and stay
9 on track in terms of timing. And if we bring this permit
10 before the Board in September, with everything that is
11 included in it, I -- I'm not sure we have enough hours in
12 the day to go through everything to really flesh out the
13 issues and make a decision in September. That's why I
14 suggested a subcommittee meeting before, so that we could
15 hear from the Corps. We could hear from DWR. We could
16 hear from TRLIA. We could hear from the locals on the
17 alignment of this levee, and have a better lay of the land
18 in terms of what it is. And these subcommittee meetings,
19 any Board member can attend. So, you know, the committee
20 members or any other Board member and staff and any member
21 of the public are invited to participate.

22 So I just -- I don't want to get to September and
23 not be prepared to try and take action.

24 CHIEF ENGINEER BRADLEY: The action, my
25 understanding, in September, will be to whether the Board

1 requests approval for this project?

2 MR. BRUNNER: No. I think it's the encroachment
3 permit.

4 MR. SHAPIRO: Scott Shapiro, special counsel,
5 Three Rivers.

6 There's no 408 action associated with the
7 construction of what is still, in essence, a backup levee.
8 The Corps has indicated to us, they are quite comfortable
9 with us proceeding with 20810.

10 Let me back up. I don't want to overstate or
11 misstate the Corps' view. My understanding is, the Corps
12 is comfortable with us proceeding with an encroachment
13 permit to construct a setback slash back-up levee. That's
14 my understanding.

15 CHIEF ENGINEER BRADLEY: I don't know.

16 MR. BRUNNER: An observation --

17 PRESIDENT CARTER: Another meeting to have a
18 subcommittee to clarify exactly what we're going to talk
19 about in September.

20 MEMBER BURROUGHS: I would like to see you proceed
21 with the subcommittee to iron out some of these issues
22 before the next meeting.

23 MR. BRUNNER: The two points I would like to bring
24 up really quick, and they are not controversial, but the
25 meeting that we would have to resolve the alignment --

1 DWR's input, unless they have the letter when the state
2 budget has come out, they will not share their comments on
3 our project. That was evident at the 10 August meeting.
4 Their comments were that any application that's still in
5 the hopper, being worked through, they will not comment
6 on, on the project. So they sat and listened. There was
7 some limited discussion that took place. But they will
8 not come and share their comments, at least with us, in
9 that forum that we had, as to what was going on or agree
10 or not to agree.

11 So with that discussion there, our meeting here, I
12 think, working with Mr. Rice, I would still like to have a
13 Rec Board rep come, interact with us. I think what we're
14 trying to do here is not to necessarily change the
15 alignment. I think we're -- the positions are there, but
16 how can we adjust within the current alignment, and work
17 with them to accommodate the best we can. I think that
18 meeting could happen before the next subcommittee meeting.

19 VICE-PRESIDENT HODGKINS: Here's what I would
20 suggest we give some thought to, and that would be that
21 perhaps come Monday, if that works for Mr. Bradley,
22 Mr. Bradley and I would meet with the TRLIA folks and
23 probably Mr. Rice and try to develop an agenda, or for a
24 subcommittee meeting, where we would have some ideas of
25 what the issues are, we would expect people to address.

1 And we could check and find out whether we could
2 get DWR to at least offer an opinion as to whether or not
3 they are particularly concerned one way or the other with
4 the relocation or the location of this levee. And I don't
5 know if they will comment or not, but we'll find out.

6 Would you be willing to assist in doing that,
7 Steve?

8 CHIEF ENGINEER BRADLEY: You said this Monday?

9 VICE-PRESIDENT HODGKINS: Yeah.

10 CHIEF ENGINEER BRADLEY: We're all in the field
11 this Monday. We're going to go up in Yuba County, several
12 things -- UPRR, the fence on the levee, and some other
13 things.

14 PRESIDENT CARTER: Is there other time in the
15 day --

16 VICE-PRESIDENT HODGKINS: Is there time?

17 CHIEF ENGINEER BRADLEY: The rest of the week is
18 fairly open, if I'm not mistaken.

19 PRESIDENT CARTER: Is there time, since you are up
20 in Yuba County, to maybe sit down with the folks as part
21 of your tour? Or is the tour the whole day?

22 CHIEF ENGINEER BRADLEY: I would have to ask --
23 there's -- we're all going, I think. So there's going --
24 there's seven or eight people going.

25 PRESIDENT CARTER: Work out the logistics.

1 CHIEF ENGINEER BRADLEY: Ask Jay. Jay can make
2 that decision.

3 MEMBER BURROUGHS: If you need to take two cars so
4 that you are available --

5 CHIEF ENGINEER BRADLEY: It makes it difficult on
6 a field trip. You can't hear as you are discussing things
7 as you are driving around.

8 VICE-PRESIDENT HODGKINS: What I would be willing
9 to do is drive up there and meet you sometime during the
10 day. And then if you need to do this in a way that we
11 don't hold the other seven people up for a period of time
12 while we discuss this, we can do that. And then I could
13 bring you back to Sacramento which would avoid taking
14 another state car.

15 It's still -- the question really is more, you
16 have commitments, I know at home, that require you to get
17 back by some time. And is there time in the day to do
18 that?

19 CHIEF ENGINEER BRADLEY: Yes. There should be.

20 VICE-PRESIDENT HODGKINS: All right.

21 CHIEF ENGINEER BRADLEY: I mean, we should have --
22 I think we plan to be through with your trip by around
23 2:30.

24 VICE-PRESIDENT HODGKINS: So we will get together.
25 I think we're going to get a break here, that's going to

1 go from lunch to 2:00?

2 PRESIDENT CARTER: Lunch to 1:00.

3 VICE-PRESIDENT HODGKINS: What's on at 1:00?

4 PRESIDENT CARTER: Hydraulic mitigation.

5 VICE-PRESIDENT HODGKINS: Okay. All right. It
6 might make sense to let that go to 1:30. That's up to
7 you.

8 But we will have time to try and work out the
9 details of this today. So I know when I should get up
10 there and where I should go to meet you.

11 CHIEF ENGINEER BRADLEY: Yeah.

12 PRESIDENT CARTER: Very good.

13 Mr. Punia?

14 GENERAL MANAGER PUNIA: I want to just make clear,
15 Board Member Butch Hodgkins raised this issue. DWR,
16 before coming to the meeting I checked with Rod whether
17 they can come and present their position. I think their
18 answer was, until they have this decision on the early
19 implementation, they are going to reserve their judgment
20 on the alignment.

21 PRESIDENT CARTER: Okay.

22 CHIEF ENGINEER BRADLEY: Is there a 104 request
23 being made for this project?

24 MR. SHAPIRO: There previously was. The Board has
25 approved it, and it's pending right now in D.C.

1 PRESIDENT CARTER: Very good. Any other
2 questions? Comments?

3 MR. SHAPIRO: Just to thank you for your time and
4 we do welcome your involvement in understanding the
5 alignment issues. And if you can bring some moderation to
6 the discussion, that would allow us to move forward. That
7 is our desire. We've -- I will at least offer my
8 apologizes to Mr. Rice. And I will say publicly, even
9 though there's a reporter here, that if you felt that we
10 haven't been as open with you, it's never been our
11 intention. But we are looking to try to find a way that
12 makes it work for everyone, so long as public safety isn't
13 at risk.

14 PRESIDENT CARTER: Thank you.

15 MR. BRUNNER: And for the record, I would echo
16 what Scott was just saying for the public apology.

17 Thank you.

18 PRESIDENT CARTER: Thank you very much.

19 VICE-PRESIDENT HODGKINS: Could I go back to your
20 staff report? I mean, your monthly report says, you are
21 advertising later this month on the setback levee. Was
22 that correct?

23 MR. BRUNNER: We have an advertisement on the
24 street. It went out yesterday.

25 VICE-PRESIDENT HODGKINS: Okay.

1 MR. BRUNNER: And it is planning to be opened in
2 the middle of September contingent upon funding.

3 VICE-PRESIDENT HODGKINS: Okay. I understand
4 that.

5 They, in effect, said their 60 percent plans has
6 been submitted, and there was an opportunity for comments
7 from the state and Rec Board staff.

8 Did that occur?

9 CHIEF ENGINEER BRADLEY: We are currently
10 reviewing them. I sent a letter off yesterday saying that
11 these plans are not really -- they are still missing
12 details for us to actually issue a permit. But we're not
13 holding up any of the review going on. There are details
14 on -- that need to be looked at.

15 VICE-PRESIDENT HODGKINS: Okay.

16 CHIEF ENGINEER BRADLEY: They aren't even labeled
17 60 percent. So I have no idea what percentage they are.
18 But we've been working on what they have submitted.

19 VICE-PRESIDENT HODGKINS: Okay.

20 PRESIDENT CARTER: Okay. If there's nothing
21 further, we will adjourn for lunch. Let's try and be back
22 here at 1:20. That gives us an hour. So we will
23 reconvene here at 1:20.

24 Thank you.

25 (Thereupon a break was taken in

1 proceedings.)

2 PRESIDENT CARTER: Good afternoon, ladies and
3 gentlemen.

4 Welcome to the afternoon session for the
5 California State Reclamation Board. We -- just to
6 clarify, in case there are any new folks that have joined
7 us, there is not a quorum today so we are not taking any
8 actions on any of the items that were listed as action
9 items on the agenda today. We had agreed earlier in the
10 morning to table Items 8 and 9 for a future meeting,
11 specifically the September meeting.

12 So at this point, there are only two items
13 remaining on our agenda for this afternoon. These are
14 Items 10 and 11. So we will go ahead and begin with
15 Item 10, consider a proposed Reclamation Board policy
16 regarding hydraulic impacts due to improvements to the
17 Sacramento-San Joaquin River Flood Control Projects. And
18 this is listed as an action item but will be a discussion
19 at this point.

20 So hydraulic impacts analysis committee -- Mr.
21 Punia, do you want to start us off on this?

22 GENERAL MANAGER PUNIA: Yes, Jay Punia. I will
23 let the Board members and the audience know where we are
24 on the subject and what type of statement we can present
25 to the Board. As most of the audience here and the Board

1 Members, we are aware, we originally hired Dr. David Ford
2 to address this subject. And the charge to Dr. Ford was
3 that we cannot come up with a conclusion that we need to
4 provide the option of how we can analyze and what are the
5 potential ways to mitigate the hydraulic impact.

6 Dr. Ford provided us that information and that
7 report has been finalized. And in our mind, that will be
8 a good reference for the Rec Board staff and for the
9 potential applicants that what -- that they can use this
10 as a reference material when they are conducting the
11 hydraulic impact analysis.

12 Since then, I just want to let the Board know that
13 MBK engineer Joe Countryman, sitting in the audience, took
14 this challenge too, and he has prepared another
15 similar-type report and gave a copy to the Board members
16 and the Rec Board staff.

17 And the Rec Board staff has met a number of times,
18 internally, to come up with a broader policy statement
19 which we can present to the Board. We have developed a
20 few statements, but the consensus of our Rec Board and
21 legal staff is that we cannot go into too much detail on
22 this subject because then that will be considered an
23 underground regulations. If we are giving the detail of
24 what type of model they should use and what that type of
25 analysis should constitute. That is the responsibility of

1 the applicant to provide us the hydraulic analysis, and we
2 will work with them so that we have sufficient -- if we
3 have sufficient information, we will present it to the
4 Board, showing the hydraulic impacts, and what are the
5 potential mitigation options the applicant is proposing.
6 Then it will be up to the Board to make a decision.

7 The only statement which -- from a legal
8 perspective we can share with the Board and adopt a policy
9 that's drafted -- and Eric, you will project it on the
10 screen? So that's a pretty high level statement that --
11 what we expect when people are asked to conduct a
12 hydraulic impact analysis. Going beyond -- it is not
13 acceptable with from a legal perspective -- Scott will
14 elaborate more why he's thinking we cannot go into more
15 detail. So it will be up to the applicants to use these
16 documents, Dr. Ford's report and MBK paper on the subject,
17 to conduct the analysis and provide to the staff. And
18 staff will analyze that hydraulic impact analysis and the
19 potential mitigation options and present it to the Board
20 so that the Board can make an appropriate decision on this
21 subject.

22 Eric, do you want to read the statement?

23 SENIOR ENGINEER BUTLER: Your screens are working,
24 right? These are not. So it should be in your packet,
25 Butch.

1 GENERAL MANAGER PUNIA: Lorraine, do you have
2 paper copies of Eric's handout?

3 SENIOR ENGINEER BUTLER: It's just a half page.

4 GENERAL MANAGER PUNIA: I think Eric is ready to
5 distribute it and Lorraine will -- this statement has
6 been -- Scott is comfortable with this, but not going into
7 a more detailed statement than that.

8 Scott, do you want to add any to this discussion?

9 PRESIDENT CARTER: Maybe we ought to hear the
10 statement first.

11 LEGAL COUNSEL MORGAN: That's fine with me.

12 SENIOR ENGINEER BUTLER: Just trying to make it a
13 little bit bigger. Shall I read this?

14 The title is "Hydraulic impact analysis
15 requirements for proposed encroachments on or alterations
16 of flood control projects under the jurisdiction of the
17 Reclamation Board."

18 "Any proposed encroachment on or alteration of a
19 flood control project subject to the jurisdiction of the
20 Reclamation Board that affects design flow or water
21 surface elevation has a hydraulic impact that shall be
22 quantified and reported to the Board by the applicant.
23 The Board may require that the applicant provide measures
24 to mitigate adverse hydraulic impacts.

25 "The hydraulic impact analysis shall evaluate the

1 impact of proposed actions, encroachments, or alterations
2 on the entire flood control system."

3 PRESIDENT CARTER: Okay.

4 VICE-PRESIDENT HODGKINS: Is this approved?

5 I'm sorry. I'm being facetious.

6 PRESIDENT CARTER: So that's the statement that
7 staff was able to come up with as far as a broad policy
8 statement on the hydraulic impact analysis.

9 Scott, did you want to....

10 LEGAL COUNSEL MORGAN: Just that, policy
11 statements of the Board is something -- for hydraulic
12 impacts or anything else are necessarily general.
13 Anything specific and everything that had been drafted by
14 staff up to this point, before this, had been specific in
15 usually a number of ways, indicating feet of water surface
16 elevation that were raised by the project, flows that are
17 studied, the models that are used.

18 Those are all the sorts of things that, if the
19 Board were to require those of applicants or define those
20 as the parameters for hydraulic impacts, need to be
21 included in as regulations. And those are rules of
22 general applicability.

23 This is, of course, a broad policy statement of
24 the Board. This is all right. But something that goes to
25 very specific levels about two-tenths of a foot or less is

1 not a hydraulic impact. That's a rule of general
2 applicability that the Board can adopt a regulation for,
3 if it wants. But it's not an appropriate policy of the
4 Board.

5 PRESIDENT CARTER: So if we wanted to be more
6 specific than this, we would have to adopt a regulation?

7 LEGAL COUNSEL MORGAN: That's correct.

8 PRESIDENT CARTER: Or alter the existing
9 regulations?

10 LEGAL COUNSEL MORGAN: Yeah. Well, I mean,
11 there's no -- there's no guideline on hydraulic impacts
12 currently, other than that the Board can require
13 mitigation for hydraulic impacts, but it's not defined.

14 The obvious hurdle, technical hurdle for the Board
15 staff and for the Board to adopt regulations is
16 determining what would be hydraulic impacts or not.

17 You've heard from lots of folks that determining
18 when you have hydraulic impacts is not easy. And
19 therefore, developing regulations that seek to define when
20 they do or do not occur will likewise be not easy.

21 But that's the appropriate way for the Board to
22 establish a rule for all applicants to follow.

23 PRESIDENT CARTER: What -- I've seen in -- with
24 prior Reclamation Boards there have been resolutions that
25 have adopted levels of specificity with regard to the

1 amount of flood protection that the Board supports and
2 endorses and other things. We are constantly making
3 decisions on projects as to whether or not they do have
4 hydraulic impacts and what mitigation there should be,
5 directing applicants to do hydraulic analysis to determine
6 if there's impacts.

7 Why -- I mean, how -- how can we have resolutions
8 that do that, and those not be interpreted in the same way
9 as a policy statement that has specificity?

10 LEGAL COUNSEL MORGAN: I would have to look at the
11 actual resolutions. I mean, there haven't been
12 resolutions like that since I have been to Board counsel,
13 at least not that I recall. If they slipped by me, I
14 apologize. But usually, the wording is fairly open-ended,
15 and it would be something to the effect of, for instance,
16 200-year protection, the Board favors greater protection
17 in urban areas. It doesn't require it.

18 The guidelines that had been drafted before the
19 policy statements of the Board had always said that a
20 certain level of water surface elevation change was or was
21 not a hydraulic impact. And that could become a rule.
22 And everyone could look at it and say, well, our model
23 shows .19 feet; that's not .2; we're below the threshold;
24 we don't have an impact. And that's a rule. That's
25 something that the Board can and should, if it wants to,

1 adopt regulations for. But a policy statement is broader.
2 Doesn't have to be this, obviously. But this is the
3 nature of the thing that the Board can easily adopt
4 without fear of it becoming an underground regulation.

5 PRESIDENT CARTER: Okay. Mr. Punia, do you have
6 anything else to add?

7 GENERAL MANAGER PUNIA: I think Scott's position
8 at this time, that it's each applicant's responsibility to
9 provide the hydraulic analysis so that the Board has
10 enough information so that it can present it to the Board.
11 The Board can make this -- information can make
12 appropriate decisions.

13 PRESIDENT CARTER: And how do we supply guidance
14 to the applicants as to what kind of information is enough
15 so that staff has enough information to make a
16 recommendation to the Board?

17 GENERAL MANAGER PUNIA: I think that we have
18 provided this reference material, and I think it's a
19 pretty standard practice in the industry that what type of
20 analysis can be done. And I think that's what we are
21 expecting, as a staff, that they follow those guidelines,
22 provide the information, and staff will work with the
23 applicant so that they have all the -- sufficient
24 information to provide the staff report so the Board can
25 make a decision on those subjects.

1 PRESIDENT CARTER: It seems like we're beating
2 around the bush here. Why don't we articulate what those
3 are in the statement?

4 Why don't we -- why aren't we able to establish or
5 articulate to the applicants what the Board and the
6 staff's expectations are in this regard? I mean, I feel
7 like we're basically saying -- leaving it to the applicant
8 to figure out and read the staff's mind and the Board's
9 mind in terms of what they want in terms of hydraulic
10 impacts. Is that what we're asking? Or can we be more
11 specific and articulate what our expectations are so that
12 they can try and meet them?

13 LEGAL COUNSEL MORGAN: If the question -- I don't
14 think the options are quite as limited. I mean, I think
15 there's a middle ground.

16 I don't think applicants have to read staff's
17 mind. They can call and talk to staff. And the Board can
18 certainly give guidance iteratively through the process of
19 things we brought to the Board and staff saying, "Well,
20 we're looking for this kind of information." And the
21 Board saying, "Well, is that really necessary?"

22 But this is, first and foremost, I think,
23 something for the applicants to work with the staff to
24 resolve. And then if there's a problem, they can come to
25 the Board and explain why too much information is being

1 sought or too much detail or that the staff's take on it
2 is too narrow and too limited.

3 But if the Board wants to give more guidance to
4 applicants, again, the regulatory process is the way to do
5 it. And we can open that process up at any time.

6 PRESIDENT CARTER: So absent the regulations, what
7 we're asking the applicants to do is to, on each and every
8 project, and the staff to do, is to it iteratively work
9 with each and every applicant on each and every project to
10 define what the expectations are of staff for this
11 hydraulic mitigation, rather than having kind of a
12 standard.

13 LEGAL COUNSEL MORGAN: And we do that with almost
14 every project that comes before the Board, that is not one
15 of the really trivial ones -- you know, fences or pipes --
16 anything that's a large project has innumerable aspects to
17 it that are not just literally spelled out in the
18 regulations, and they fall under the broad umbrella of
19 reasonable conditions imposed by the Board in a permit.

20 And ideally, the applicant will work with staff to
21 present the project, describe the project, and the staff
22 will try to hammer out any issues where they don't --
23 where they have some concern about the permit. And they
24 will reach a consensus on what's the best approach and
25 present that as a unified package to the Board.

1 But there's lots of gray areas out there. And the
2 bigger the projects, things like TRLIA's projects or River
3 Islands projects or any of these very large projects, have
4 lots and lots of side issues that aren't spelled out in
5 the regulations.

6 Hydraulic impacts is just the latest big one to
7 come along.

8 VICE-PRESIDENT HODGKINS: As I recall, this became
9 an issue to be dealt with as a Board policy. This is my
10 own thinking. Okay? Because there was a proposal in
11 connection with TRLIA to raise their levee slightly higher
12 than the design. And the analysis that the applicant was
13 submitting, I think, was judged inadequate by staff. Is
14 that a fair statement, Steve?

15 CHIEF ENGINEER BRADLEY: The analysis did not
16 analyze what the impact of changing the design of the
17 system did on the system. They -- the hydraulic analysis,
18 I would have to say, was accurate. It didn't address what
19 changing the design flow on the system would do to the
20 actual -- to the entire system.

21 VICE-PRESIDENT HODGKINS: Okay.

22 CHIEF ENGINEER BRADLEY: They did not look at that
23 portion.

24 VICE-PRESIDENT HODGKINS: Okay.

25 So the question is -- was, what would you do?

1 What do you want them to do to analyze that impact? And I
2 think that's the part that at least, as I understood it,
3 listening to the applicant, not just Steve, that they
4 couldn't figure out. And so that's what led to trying to
5 get some kind of a Board policy statement here. Can you
6 answer that question, Steve, for them today, for instance?

7 CHIEF ENGINEER BRADLEY: Yeah. They just looked
8 at the Yuba River. They didn't look at what happened at
9 that flow, which is a much increased design flow coming
10 out of the Yuba River, what it did to the flood system on
11 the Feather River or even downstream when it joins the
12 Sacramento. It may have had impacts; it may not have.
13 They didn't look at it. And I can't make any decisions.
14 It's not any job to tell them how to do something; that is
15 their job.

16 My job is to say whether they have done it right
17 or wrong. Now, if they want it in my opinion, they can
18 come talk to me. They have never done that.

19 VICE-PRESIDENT HODGKINS: Okay. Maybe that's the
20 perfect trial case here, to see if this works. I mean,
21 the process you described is not a process that I have a
22 problem with. We read it iteratively to try and deal with
23 these issues as it comes up in a project-by-project basis.

24 So the idea would be to have the applicant on that
25 particular project, running the risk of, you know, giving

1 the applicant work to do that they don't want to do, to
2 work with Steve, to discuss what the shortcomings were
3 with respect to their application, I think.

4 I am just sitting here, listening to Steve. One
5 of the things I want to say is, perhaps if you include a
6 before project and after project analysis of the
7 hydraulics other than on the Yuba River. Is that part of
8 what was asked?

9 CHIEF ENGINEER BRADLEY: Yes. They didn't look
10 downstream. Somewhere, you have got to find if there are
11 no impacts. You have to set a point where there's no
12 impact fee and the water surface converges downstream so
13 you know there's not impact, or you run it all the way to
14 the Delta. It's just that simple. And there's impacts
15 all the way down and that can happen.

16 If you should increase the flow large enough
17 upstream, it's going to be all the way down through the
18 system.

19 VICE-PRESIDENT HODGKINS: Okay. I see the
20 applicant is here now.

21 You know, this has kind of been one of my areas
22 where I just felt like we were knocking heads in terms of
23 providing some kind of guidance to both our staff and the
24 applicants as to what they should be trying to analyze.
25 It turns out, we don't get to provide that guidance short

1 of adopting regulations.

2 Is that a fair statement, Scott?

3 LEGAL COUNSEL MORGAN: Well, not in the style that
4 I think was proposed earlier, which was a guideline that
5 laid out with great specificity exactly what was going to
6 be hydraulic impacts and how they are going to be
7 measured.

8 But I think generally the process of hearing
9 proposals brought to the Board and working -- hearing how
10 staff is dealing with the applicants and what is being
11 looked at, the decision the Board makes, that's how the
12 Board can weigh in, short of regulations. But other than
13 that, regulations. And those can be started at any time.

14 VICE-PRESIDENT HODGKINS: Do you have a comment,
15 sir?

16 MR. SHAPIRO: Scott Shapiro, special counsel for
17 Three Rivers.

18 I want to be very careful here because I didn't
19 hear the majority of the discussions because I walked in a
20 moment ago. And I don't want to speak of something I
21 don't have full knowledge of.

22 The idea that we work with staff to determine an
23 acceptable standard for evaluation is, I think, generally
24 fine.

25 VICE-PRESIDENT HODGKINS: Not a standard, a -- I

1 think it's more of a methodology or an approach.

2 MR. SHAPIRO: Even methodology and approach, I
3 think, is fine.

4 The challenge that we've had is that I think I
5 agree with Steve, that there was no analysis on the
6 Feather River. But if my recollection is correct, it's
7 because the analysis stated, we were not doing analysis on
8 the Feather because the Feather is a controlled release
9 system.

10 And the current guidelines on the Feather state
11 that releases from Oroville shall be limited to such
12 releases that with the inflow from the Yuba, they will not
13 exceed X at a particular location. And so if those are
14 the current operating standards on the Feather, then it
15 seemed that there wasn't any analysis to do on the Feather
16 because the Feather is a controlled system in light of
17 what the Yuba is sending out.

18 And so that's where we did the analysis. And I
19 don't -- I'm not an engineer. So if Steve says he needs,
20 you know, to consider the Feather, I will take him on his
21 word that he needs to consider the Feather. But as an
22 applicant, I'm not sure how we bridge the gap between what
23 we did, saying, here is a model, and for Steve it didn't
24 get him where he needed to go, yet it's been eight or nine
25 months, and he's correct, we haven't sat down with him to

1 say, "What do you need?" and we haven't heard from staff
2 as to what's inadequate about the model. And so that's
3 where, as an applicant, we would like to see something
4 move forward to help us figure out where to go.

5 VICE-PRESIDENT HODGKINS: The Board can cut this
6 off whenever they want to.

7 But what I think I heard Scott say is, there's a
8 provision in the O&M manual that says the state will
9 control the releases at -- the state will control the
10 releases from Oroville so that the total flow from
11 Nicholas is limited to 320,000. Am I remembering the
12 right number? He didn't say.

13 So he's saying that even if more water came down
14 the Feather, that provision would deal with how the flow
15 in the Feather would have to be reduced. And so what's
16 the next step? What do you say next?

17 CHIEF ENGINEER BRADLEY: I don't know the entire
18 operation of the Feather-Yuba system, because it's fairly
19 complex. Part of it was assumed designed in the
20 Marysville Reservoir, which has never been built. The
21 Yuba cannot be controlled by New Bullards Bar. They have
22 the ability to release 180,000 CFS out of New Bullards Bar
23 under current condition. The levees are only designed for
24 120. So I presume they could overtop the levees or at
25 least greatly exceed the design.

1 I'm not sure how to coordinate -- the operations
2 of the two systems are tied together. What I'm saying is,
3 the river is downstream. We're not tied into New Bullards
4 Bar. That's not a Board project. That's a private
5 reservoir. That's not part of our operation.

6 What you have is a system that's designed for
7 120,000 CFS on the Yuba. You have certain flow on the
8 Feather River, 300 basically at the junction of the
9 Feather and the Yuba. If they want to change that flow on
10 the Yuba and go to the 200-year flow, which is what you're
11 talking about -- I don't remember what that was, but it's
12 160 thousand or whatever it was. We need to analyze the
13 impact. Does that mean that Oroville cannot always meet
14 that condition? I don't know. I don't think there's some
15 fairly complex issues here when you are changing the
16 design of the system.

17 Now, maybe it works out fine. I don't know. And
18 it may be that they are fine. It has never been shown to
19 me. It's not my job to do this analysis. It's my job to
20 say, I can't tell you because they haven't provided any
21 information for me to do that. They can go out and do
22 this. They can talk to me why I'm uncomfortable with it.
23 They can explain why they think they're right and bring
24 the domination. None of that has been done.

25 MR. SHAPIRO: But Steve --

1 PRESIDENT CARTER: I would like to get back to
2 kind of the general policy discussion here rather than the
3 specific example.

4 So Mr. Buer, would you like to address the Board?

5 MR. BUER: I would like to wait until
6 Mr. Countryman has had a chance to present his thoughts.

7 PRESIDENT CARTER: Okay. Mr. Countryman?

8 MR. COUNTRYMAN: Joe Countryman, president, MBK
9 Engineers.

10 I have a question before I make a statement. Is
11 it -- the policy statement, I couldn't read it from where
12 I was sitting. But I believe it referred to an increase
13 in stage; is that correct? An increase or stage or
14 discharge? Was there some specific condition that you are
15 referring to here?

16 CHIEF ENGINEER BRADLEY: Yeah, the design.

17 PRESIDENT CARTER: It says that it affects design
18 flow or water surface elevation.

19 MR. COUNTRYMAN: Thank you. I just can't quite
20 see the way I used to.

21 Okay. Well, that policy statement right there is
22 pretty straightforward and clear and actually very easy to
23 comply with from an engineer's point of view, trying to
24 comply with the system. Basically that would be
25 addressing the issues within the floodway, between the

1 levees, because anything you do outside the levees is not
2 going to raise the water surface elevation. So this is
3 more or less been the Board practice forever, as far as I
4 know, is that you don't put something in between the
5 levees that's going to raise the water level to a point
6 such that the design flow won't go through at the design
7 stage, or you will divert water in a way that you would
8 increase flows beyond the design flow.

9 If I'm interpreting the statement correctly, I
10 mean, that's pretty straightforward analysis, that's
11 clear, and we could easily comply with.

12 The one thing that has been troubling and
13 difficult to understand and how to address -- and I talked
14 with Steve a couple times because the complexity of it is
15 immense. And that is not when we're talking about
16 something in the channel that's going to affect the water
17 surface elevation, but if we're talking about
18 strengthening a levee on the land side, does that have an
19 impact? And if it does have an impact, how do we estimate
20 what that impact is? And it's an extraordinarily
21 difficult question to answer.

22 Because basically you have 1100 miles of levee in
23 all different states of -- what's the word I'm -- of
24 strength. Some of them, probably a geotechnical analysis
25 would show they don't have a factor of safety of one, for

1 the design flow. And others would have a factor of safety
2 of three.

3 And the truth is, for the 1100 miles, we cannot
4 define every quarter mile of that levee, what the current
5 strength of it is; would it fail or not fail? My point
6 being that if we strengthen a levee and we're saying,
7 what's the impact of that, it has to be based on the fact
8 that now that the levee would have failed and now it will
9 not fail because of the work that's being done. That's
10 one part of the equation.

11 And there's different ways that could be done. We
12 could just say, we'll assume that the levee will fail if
13 it exceeds its design flow or design elevation. Or we
14 could say, we'll assume the levee will fail when they
15 overtop.

16 Regardless of what's chosen, you have to make an
17 assumption. You can't -- as hydraulic engineers we can't
18 do the analysis without some way of telling the computer
19 model what it's supposed to replicate.

20 We have, in our firm, have thought, let's use the
21 top of levee. There's not too much argument about that.
22 In other words, if the water goes over the top of the
23 levee, it's a reasonable assumption that it will fail.
24 Now, there's a few isolated examples where that has not
25 happened. But as a general rule or practice, it would

1 seem to be a reasonable assumption to say, if the levee
2 overtops, it fails. Otherwise for the hydraulic impact
3 analysis, we're going to assume it does not fail.

4 Now, that's just what was our best judgment. And
5 we don't claim to have all knowledge on this. If the
6 Board came with another assumption that they felt more
7 comfortable with, if it exceeds the design elevation and
8 assume the failure, I mean, we can do that analysis too.
9 We can do just about any analysis as long as we know what
10 it is that will satisfy the regulatory needs of the Board
11 and its staff.

12 The added thing that I sent in my paper, and I
13 know it's -- I just reread it again this morning and I
14 realized it actually turned out to be a little more
15 complex than I intended it to be. I tried to make this
16 readable, but when I read it, I realized it was fairly
17 complex.

18 But one of the key points I wanted to make in the
19 paper was that there's not a direct relationship between
20 water surface elevation and levee failure. And I give the
21 example there of the Yuba River levee, Paterno levee,
22 where it has different water surface elevations, where it
23 failed and didn't fail. And actually, the highest water
24 surface elevation ever experienced on that levee, it did
25 not fail. And one of the lower ones that it experienced,

1 it did fail. The point being, there really is not a
2 one-on-one relationship between water surface elevation
3 and levee failure.

4 And again, you know, how do we address that? I
5 suggest that we use the top of levee as if it overtops the
6 levee, there's a real high probability of failure, and
7 that's a reasonable way to do the analysis.

8 The second thing that we've been struggling with
9 is, okay, maybe you don't cause somebody's levee to fail.
10 But let's say, we strengthen levee X, and levee Y across
11 the way fails, and it would have failed anyway. The fact,
12 the fact that levee X was strengthened doesn't really
13 change the fact that levee Y would have failed. But do we
14 change the depth flooding in area Y because area X was
15 failed? And we're struggling with how to develop an
16 analysis that would show that.

17 And I think there are some tools that can be used
18 to do that kind of analysis, but it's not simple. And I
19 don't know -- you know, is it necessary, I guess is the
20 other question. And if I'm hearing what the Board is
21 saying -- not Board, but the staff is saying is that it
22 may or may not be. Sit down with the staff and figure out
23 if that kind of analysis is needed or not. And we can do
24 that too.

25 But we are going to need something so when we

1 finish and we hand it to the staff, we have some assurance
2 that it meets the intended purpose that the staff needs to
3 make an evaluation.

4 So I support what President Carter is suggesting,
5 that guidelines would be very helpful to those that are
6 wanting to strengthen and do work on the levees.

7 And but again, if all we're doing is strengthening
8 levees, this policy statement would not trigger any new
9 analysis that hasn't already been done, because we're not
10 going to be changing the design flows or stages in the
11 channel by putting a berm on the land side of levee.
12 There will be no effect, whatsoever, within the floodway.

13 So that's it.

14 PRESIDENT CARTER: Go ahead, Mr. Punia.

15 GENERAL MANAGER PUNIA: I think we discussed it at
16 the staff level. And Joe, we fully agree with you, that
17 if you are doing stuff outside the levee or strengthening
18 the levee, in our judgment, there's no hydraulic impacts.

19 So I think, if you are putting a land side berm,
20 then there's no hydraulic impacts that we will ask you to
21 analyze.

22 CHIEF ENGINEER BRADLEY: I disagree with that.

23 I think there are hydraulic impacts. I think they
24 are probably going to be insignificant. I think they
25 should be looked at, which is what we've done with seepage

1 walls. You turn out to prevent seepage of 6 CFS in a
2 channel that has a hundred thousand CFS, that's
3 insignificant. They can quantify it. That's the reason
4 you're putting in a seepage wall. You need to know that
5 you are cutting off the seepage and how much seepage
6 you're going to stop. That's an insignificant calculation
7 in the entire cost of the seepage wall project.

8 LEGAL COUNSEL MORGAN: And that was something that
9 we did with a SAFCA project that came before the Board a
10 few months ago. And at the 11th hour, we asked SAFCA to
11 do an analysis, sort of a worst case scenario analysis,
12 with the understanding that and the full expectation that
13 it was not, even in the worst case scenario, it was not
14 going to show any appreciable hydraulic impact. And that
15 is indeed what it showed.

16 So we weren't looking for a very expensive -- with
17 apologizes to the consulting engineers who make their
18 money from running expensive models. It was not looking
19 for any expensive model of the system, but was looking for
20 something very bare-bones, very cursory, not erroneous or
21 faulty in any way, but making a whole lot of broad
22 assumptions on the conservative side to put more water in
23 the system. They still only got, you know, in the single
24 digits of CFS.

25 The idea being, from a legal perspective, to be

1 able to walk the Board through the process of
2 demonstrating that the applicants had, in fact, evaluated
3 this and demonstrated no significant hydraulic impacts, so
4 the Board could make a finding that there was no hydraulic
5 impacts.

6 GENERAL MANAGER PUNIA: I want to make it -- yes,
7 that's correct, that we will analyze that how much seepage
8 it has controlled that it's not going into the floodway.
9 We are not asking you to read on the models that you have
10 strengthened your levee, that you have to analyze the
11 impacts of that strengthening component of the levee.

12 PRESIDENT CARTER: So essentially, the kinds of
13 projects that we're really concerned about are the ones
14 where we're doing works inside the floodway or raising
15 levees --

16 GENERAL MANAGER PUNIA: That's correct.

17 PRESIDENT CARTER: -- above the '57 profile?

18 GENERAL MANAGER PUNIA: That's correct. Also
19 setting back the levee, and we will ask you to run your
20 model and show us the impacts.

21 PRESIDENT CARTER: Okay.

22 CHIEF ENGINEER BRADLEY: And then there's the
23 determination of whether that is significant or not. And
24 I think that's where the question really lies is the
25 significance issue.

1 PRESIDENT CARTER: Mr. Buer?

2 MR. BUER: Good afternoon, Mr. Chairman and
3 members of the Board. I'm Stein Buer, executive director
4 for the Sacramento Area Flood Control Agency. And I
5 appreciate the fact that the Board and staff are engaged
6 in this very, very important issue.

7 And before I start my general statement, I would
8 just like to make a couple of thoughts here with regard to
9 the parsing that I just heard, distinguishing between work
10 which strengthens the levee and which perhaps raises the
11 levee and distinguishing the kind of hydraulic impacts.
12 Let's just for a moment take the situation in Natomas.

13 Let's say we have a certain height of elevation right now.

14 If anyone believes that we would allow those
15 levees to overtop in a flood situation, they are mistaken.
16 You've got flood fight activities -- are really a part of
17 the system, an integral part of system. And if there's
18 any risk whatsoever of those levees being overtopped, we
19 would raise those levees overnight. It can be done. It's
20 been done many times before. It can be done very swiftly.

21 And so the real risk of failure is not
22 overtopping, it's whether or not the levees fail
23 structurally. And the seepage walls, you talked, just
24 momentarily now, about the impact of cutting off the
25 seepage and the effect on the flow. We all know that it's

1 just a trivial part of analysis. The real question is
2 whether those cutoff walls can strengthen the levees to
3 the point where the failure mode of underseepage and boils
4 and so on will cause failure and thereby change the
5 overall distribution of flow out of the system.

6 I think it's an indication that we have to be
7 practical about the way we're going about this. And my
8 opening assertion here, this afternoon, is, with all due
9 respect to staff's careful analysis, I believe that the
10 Board, the members of the Board, have a lot more freedom
11 to exercise their leadership and judgment than staff might
12 suggest.

13 The current situation, which Steve laid out for
14 you very impactively [sic] is that he's essentially in a
15 position of determining what is an adequate analysis.
16 Now, he said, it is not my job to tell you how to do the
17 analysis. I react to what is provided to me. But the net
18 effect is, it's his job to determine what is adequate,
19 because until he sees an analysis he likes, he will reject
20 those analyses. So in effect, you have an underground
21 regulation that is even more underground than what the
22 Board itself would have if the Board made a general policy
23 decision about what kinds of analysis would be acceptable.

24 If you read Joe's paper carefully, that is based
25 on his many, many years of experience and knowledge of

1 analyses and how the system is functioning. There's 50
2 years of analysis and experience, and the input from
3 multiple professionals. And we've learned a lot about how
4 the system works. And Joe did a good job of capturing
5 that.

6 And essentially, what he's saying is, if you don't
7 change what's between the levees and the channels, you
8 don't obstruct flows, you don't reroute the flows, you're
9 not going to affect stages within those levees. You just
10 aren't going to do it.

11 If you -- furthermore, if you strengthen the urban
12 areas, further, following a policy direction, which has
13 been set and supported by the state since 1986, which was
14 based on a system evaluation that was conducted by the
15 Corps with cooperation by the state, following the
16 '86 flood, that policy direction has been in place, has
17 been supported by DWR and the Reclamation Board in its
18 decisions, now, for a period of a couple of decades.

19 So we are consistently following that pathway.
20 And what we've learned from the analysis supporting that
21 work -- the Corps study, the subsequent study -- is that
22 further strengthening of the urban areas, which already
23 have a much lower risk of failure than the rural areas,
24 will not further have hydraulic impacts on the system. We
25 already know that.

1 And so to send every applicant back to the drawing
2 board, to square one, to do a systemwide analysis each
3 time, is hugely inefficient and time consuming and
4 unnecessary.

5 And therefore, I would argue that it is within the
6 Board's prerogative, based on the vast amount of data and
7 information and system knowledge we have compiled,
8 watching the system operate, seeing how these levees fail,
9 recognizing its incredible complexity and the minimal
10 effect of the urban levee improvements will have on the
11 rest of the system, I think you have the freedom to set a
12 policy where in within broad guidelines, you can limit the
13 extent of the hydraulic analysis necessary for work to
14 complete -- to be completed.

15 Now, putting this in a broader context, I think
16 it's important for the board to recognize that we don't
17 have all the time in the world to work this out. We are a
18 moment in time. When we have the support of the public,
19 we have the attention of the federal government, we have
20 money in our coffers. If we move swiftly and decisively
21 to spend that money well and appropriately, we will
22 continue to have support at all levels.

23 If we hesitate, spend all our time and analysis in
24 paralysis in slowing things up, we will lose that mandate;
25 we will lose that historic opportunity. And I think this

1 Board needs to be mindful of the fact that time is on our
2 shoulders and we need to be decisive at this time.

3 Thank you.

4 PRESIDENT CARTER: Any questions of Mr. Buer?

5 All right.

6 Mr. Bradley?

7 CHIEF ENGINEER BRADLEY: With all due respect to
8 Mr. Buer and all his staff, which I have a great deal of
9 admiration for, I believe that's a lot of red herrings
10 here. The ability to raise that levee in a flood fight to
11 protect yourself, I believe, will happen. That is not the
12 condition that the system was designed for. That may, in
13 fact, happen. It will be a short-term condition. The
14 levee will not be allowed to be raised and remain in that
15 condition.

16 Conditions that we are talking about here is a
17 conscious change -- a conscious action to change the
18 design of the system as it currently exists, and what that
19 does to the rest of the system.

20 Is increasing the flow on the Sacramento River
21 detrimental to somebody else? I believe it's this Board's
22 job to look at that and make a decision on that. You have
23 to know that. You may decide that there are some
24 acceptable risks. I have no idea.

25 But you should know if what they are planning to

1 do as a project has an impact on somebody, whether you
2 should require them to mitigate for that impact. That is
3 the essential question here.

4 If you don't think I don't think Natomas needs
5 high levels of protection, I do. I think it ought to be
6 500-year protection. That's the minimum we ought to be
7 going for. That's what everybody else in the country at
8 least has, except for New Orleans and, I believe, Omaha.
9 I think we do. I think there's a process to go through
10 here.

11 Mr. Buer's right. We have -- there is an
12 opportunity to move forward here. But we still need to
13 look at the consequences of the actions that are going
14 forward. You just can't willy-nilly make a change. It
15 may be decided that it is much better to protect Natomas
16 than some ag land. I think that's probably a reasonable
17 decision, but I think you need to consciously analyze that
18 and make a decision on that.

19 So I think there's a lot of things going on here.
20 But just raising that levee in a flood fight is different
21 than consciously changing the design of the system.

22 PRESIDENT CARTER: Mr. Punia?

23 GENERAL MANAGER PUNIA: Obviously, this is a
24 complex subject and complex issue. My approach on this is
25 that the staff gather the information from the applicant

1 and present it to the best of your ability. And you will
2 have a chance to listen to staff that whether they are
3 satisfied with the analysis or not, and you will have a
4 chance to hear from the applicant, and then it will be up
5 to the Board to make a decision on those projects.

6 PRESIDENT CARTER: Okay. Any other comments?
7 Mr. Buer?

8 MR. BUER: Just a quick follow-up to Mr. Bradley's
9 comment. He's absolutely correct that following a flood
10 fight, any temporary measures would indeed be taken down
11 again; that's been the history, in the past.

12 When I spoke to that, what I was pointing out is
13 that from a practical perspective on how the system will
14 function, the system will function with a raised levee in
15 a flood emergency for the urban areas. And so whether or
16 not you take it down afterwards is not really relevant.
17 What's important to look at is how the system functions.

18 And I was pointing out that the parsing of the
19 improvements to the levees, whether it's a little bit of a
20 raise or strengthening the levees and seepage walls, I
21 think it's an artificial distinction in many cases. And
22 so we need to look with a practical eye to how the system
23 functions. And we have a huge body of information that
24 already tells us how it operates.

25 And we probably do not need to go back in and

1 reanalyze in great detail each and every action, as
2 recommended by staff. I think we have a body of
3 knowledge. Just like a car moving down the highway at
4 60 miles an hour, we don't have to go through the
5 calculations again to find out how much kinetic energy
6 there is. We've done this; we've got the experience. We
7 know what happens when that car hits a wall.

8 PRESIDENT CARTER: Thank you.

9 CHIEF ENGINEER BRADLEY: I think there's a problem
10 with -- you heard Joe Countryman say that there's not a
11 one-to-one correspondence between elevation and water
12 surface when a levee fails. But there is a one-to-one
13 correspondence if that levee fails above the design water
14 surface or below the design water surface. It is the
15 responsibility of the state for that levee.

16 So I think there's a one-to-one correspondence for
17 liability, but not for when a levee is going to fail.

18 FEMA, when they look at this floodplain mapping,
19 once that design water surface is exceeded, they assume
20 the levee is not there, because that's all that you're
21 supposedly -- that levee is good for, is up to that
22 designed water surface.

23 Anything you get above there is a benefit. If
24 mother nature throws a 200-year storm at you, you're
25 lucky. There's no -- we're not saying you can't do that.

1 You may be able to do that. But the system is sort of a
2 pass-fail system. It is supposed to work up to that
3 design water surface and not fail below that design water
4 surface. Above there, anything goes.

5 Mr. Buer said, you can protect those levees. It
6 still doesn't mean that the levee's not going to fail; it
7 can still fail. But we're saying that as long as it
8 doesn't fail below the designed water surface, then we're
9 not responsible for that. There's a certain design that
10 we're sort of saying, this is what the system design
11 should handle this flow, this elevation. Beyond that is
12 wild; we don't know what's going to happen beyond that.

13 PRESIDENT CARTER: Okay. I think Mr. Washburn --
14 we're -- this discussion is going to continue.

15 The point of this discussion is to try and help
16 both the Board and the applicants come to a meeting of the
17 minds in terms of what the expectations are from both
18 sides in terms of addressing projects that improve the
19 plan of flood control.

20 I'm not sure we're there yet. So this will be an
21 ongoing discussion. Whether we take it on a
22 project-by-project basis and establish precedence that way
23 or if we're able to change regulations so that we can
24 be -- we can provide a level of specificity to the
25 applicants in terms of what the expectations are of the

1 Board and of the staff.

2 I don't know what the resolution is going to be,
3 but it doesn't feel like we're -- we've got resolution
4 yet.

5 So Butch and I will continue to noodle on this and
6 try and figure out what the next steps are at this point.

7 This has been a very good discussion. I
8 appreciate everybody's input. And we will -- we will have
9 more fun discussions.

10 What I would like to do is move on to our next
11 item, Item 11. Oh, wait, I'm sorry. I do have one other
12 person who did submit a card on this.

13 Mr. Huang, did you want to comment on Item 10?

14 MR. HUANG: Just a short comment.

15 PRESIDENT CARTER: Short comment?

16 MR. HUANG: Chair and Board Members, good
17 afternoon.

18 My name is Wilbur Huang. I work for URS
19 Corporation, and I have been helping on some of the
20 hydraulic modeling for the erosion sites repair that DWR
21 and the Corps have been undertaking.

22 I would like to look at this general statement and
23 bring the Board's attention to improve five items:

24 First one is to establish a baseline, because when
25 we hear about what kind of impact we have, we need to have

1 a baseline to compare. We are saying that we are using
2 design flow, 1957, and design elevation. But the system
3 has been -- you know, changed a lot since then. And the
4 invert of the channels have been changed a lot, either
5 degraded or aggregated. And the baseline of the design
6 flow and design elevation has changed.

7 So if you increase -- sometimes, the elevation,
8 you run the flow for the same reach, it's already over the
9 past, 1957, design elevation, sometimes a lot lower;

10 And the second one is the hydraulic model
11 criteria, one dimensional or two-dimensional. When you
12 have a high rise, when is a lot easier to build. But they
13 don't take into account the extraction and expansions of
14 small reach to reach, at which two-dimensional model would
15 be a lot easier to accommodate. And sometimes you have
16 significant impacts showing up on 1D, and two-dimensional
17 model does not show anything. So what is the criteria?

18 And the .1 feet water surface elevation increase,
19 is the .11 insignificant, or .09 is very significant?
20 And -- so give us some number. Depends on the accuracy of
21 your totaling. .5 feet accuracy, .1, it's really, really
22 minimal for the accuracy comparison.

23 And the fourth thing is velocity. When you put in
24 a rock on one side of the levee and the current would
25 increase on the other side and the velocity would actually

1 erode on the other side of the levee, is that -- when you
2 are looking at the flow and elevation, is there a velocity
3 criteria for hydraulic impact?

4 And the last one is eddy. When you are putting
5 the rocks with transition, very nice transition, the eddy
6 would be minimum. However, it's a large eddy that's
7 incurred by the rock placement, that would be considered
8 as a hydraulic impact as well.

9 Thank you, Board.

10 PRESIDENT CARTER: Thank you.

11 Okay. Again, thank you all for participating in
12 this. There will be more -- we will revisit this issue.

13 So moving on to Item 11, Phelan Levee Erosion.
14 M&T Ranch, Butte Basin.

15 Mr. Heringer?

16 Just so everybody knows, Mr. Heringer is going to
17 be presenting some issues on levee erosion along the
18 Phelan Levee.

19 Mr. Swanson from DWR will be presenting the
20 state's perspective on the situation up there.

21 MR. HERINGER: Chairman Carter and Board. I
22 also -- with me today to make the presentation is Stuart
23 Edell from Public Works, Butte County.

24 PRESIDENT CARTER: Okay.

25 MR. HERINGER: He's here also.

1 (Thereupon an overhead presentation was
2 presented as follows.)

3 MR. HERINGER: I was here last month and made a
4 presentation to you during the public session. And
5 because I didn't get in time to be on your agenda, but I
6 made it this time.

7 So this is the same issue that I was speaking to
8 last time. I'm the manager of the M&T Ranch. My name is
9 Les Heringer. I've been there for 21 years, and we farm
10 just southwest of Chico in Butte County. And I always
11 have -- I also oversee the M&T Weir, which is on the
12 ranch. It's the first relief valve into the Butte Basin
13 overflow area.

14 With my PowerPoint today, which is short, I want
15 to raise your level of awareness on the bank erosion
16 problem at Sacramento River Mile 192.5. And I would also
17 like your support in getting this erosion fixed for the
18 reasons that I'm going to explain to you here shortly.

19 Between last May and -- between May of '06 and
20 February of '07, we lost 75 feet of riparian between the
21 Sacramento River at this river mile 192.5 and our levee.
22 And the river is now just a little over -- it's about
23 120 feet from our levee.

24 We've -- the state and Army Corps of Engineers has
25 been watching this area for many, more years. They did

1 bank protect just north of this area in the early '80s,
2 because the river was trying to -- the river was halfway
3 through the levee north of there. And I will have a
4 picture of that here very soon.

5 Failure of the Phelan Levee could create an
6 unregulated, uncontrolled river opening into the Butte
7 Basin affecting the infrastructure, commerce,
8 transportation, agriculture, and safety of several
9 counties.

10 The erosion is past where the Reclamation Board
11 committed to provide assistance.

12 In the mid 1990s, I was told, first, that the
13 problem would be fixed when the river was within 150,
14 200 feet of our levee. And it's 120 feet now at its
15 closest point. But less than 150 feet all the way along
16 that levee.

17 And then I was told that the state would have to
18 certify that the levee would fail in a single flood
19 season. That's -- this is what they told me the second
20 time around.

21 The Reclamation Board established flood design
22 flows for this part of the system. And a failure here
23 would violate those established flows, which I will show
24 you here, very soon.

25 --o0o--

1 MR. HERINGER: Here is a picture of the problem.

2 The area north of that square was protected by the
3 Army Corps of Engineers in 1983. Where that belly is,
4 right north of the square, the river was halfway through
5 that levee. And they repaired that because they didn't
6 want the river entering the basin in that area. The river
7 does enter the Butte Basin just south of the location,
8 about a mile and a half, at the M&T Weir site.

9 And it's a hardened structure. There's concrete,
10 there's bank protection, there's riprap there. And it's
11 worked well, although after some of the more serious flood
12 events, the state has had to come in and patch it up. But
13 it works well for all parties involved in Butte and even
14 further on down, in those counties.

15 --o0o--

16 MR. HERINGER: Here's a picture here, 15 years of
17 bank erosion. It shows what the -- what has gone on there
18 since -- that would be 1993, 1992. And Department of
19 Water Resources has been monitoring this site for us. And
20 those lines show the recession of our bank every year, and
21 the growth of the gravel bar on the opposite side of the
22 river.

23 But what the river is trying to do is force its
24 way back through our levee again, as it tried to do
25 upstream from this point, and find another entrance into

1 the Butte Basin overflow area.

2 --o0o--

3 MR. HERINGER: There is -- this area is spoken
4 about very clearly in the California Water Code, No. 8361.
5 "The Department shall maintain and operate on behalf of
6 the state the following units or portions of the works of
7 the Sacramento River Flood Control Project, and the cost
8 of maintenance and operation shall be defrayed by the
9 state."

10 And then you look at No. P, and it says, "The
11 flood relief structures or weirs or other structures or
12 facilities essential for their proper functioning in the
13 vicinity of the Sacramento River between Big Chico Creek,"
14 which is just north of this erosion site, about a mile and
15 all the way down to the north boundary of Glenn County,
16 Levee District No. 3.

17 And this speaks very clearly to all -- to the
18 three relief structures that allow water to enter the
19 Butte Basin. Ours is the first. There's one just south
20 of our structure, about 2 miles. It's called 3B's and
21 then there's another one down on the Llano Seco Ranch,
22 which is called Goose Lake. And between the three,
23 there's about a 150 -- design flood of about 150,000 cubic
24 feet per second can enter the Butte Basin. And that would
25 leave, in the design flood, about 150,000 cubic feet per

1 second in the river.

2 And the purpose of this is to protect the project
3 levees that start at about river mile, I think, 194 -- or
4 I'm sorry, 174, and then of course all the way down to
5 Colusa and further south from there.

6 --o0o--

7 MR. HERINGER: Here's -- the design flows assume
8 controlled releases into the basin. Note that only
9 150,000 cubic feet per second flow into the Butte Basin
10 under design flows. Failure of the Phelan Levee would
11 both increase the maximum flow as well as extend the
12 period of inundation.

13 This, of course, is the Butte Basin. It shows the
14 design flow of 300,000 cubic feet per second with 150,000
15 cubic feet per second leaving the Butte Basin at the three
16 weir structures.

17 --o0o--

18 MR. HERINGER: This is a picture of Ord Ferry
19 Road. The -- it's a major route that connects Willows and
20 Orland with the city of Chico. And this is what happens
21 to it every time the water flows over these weirs. It
22 goes underwater.

23 And so people that want to move back and forth
24 through the valley here are forced to either go further
25 south, quite a bit further south, all the way down to the

1 Colusa area, maybe further south than that, because
2 Highway 162 between Butte City and Oroville also is
3 closed. So they either go quite a bit further south or
4 all the way up to Hamilton City and over.

5 --o0o--

6 MR. HERINGER: There is wide local support to fix
7 this problem. We have letters here from both the Butte
8 County Board of Supervisors and the Glenn County Board of
9 Supervisors seeking assistance to fix this problem.

10 --o0o--

11 MR. HERINGER: The conclusion here is, the
12 Reclamation Board must act to help us with this problem.
13 M&T has provided years of notice of this problem. To
14 date, the state has simply sat on its hand. The voters
15 passed Proposition 1E to assure that the system operates
16 as it was designed to operate.

17 A failure here would lead to years of litigation
18 and millions in liability. It is within the power of the
19 Reclamation Board to fix this problem.

20 Then I also gave you just a very short packet here
21 that I would like to cover that describes some of the --
22 some of the legalities of this issue. I said earlier that
23 DWR has said that they would fix this levee when it became
24 a problem, so the river didn't become uncontrolled and
25 unregulated.

1 In 1996, the Army Corps of Engineers commissioned
2 a study that Ayers did for them. And what that study said
3 was, it doesn't matter where the river enters the Butte
4 Basin. The Butte Basin will be self-balancing.

5 So this is what DWR is going on. This is -- this
6 is what they've told me time and time again this year,
7 that when we have spoken, that it's not their problem
8 because the basin will be self-balancing.

9 And in speaking with the folks up in our area --
10 this was in 1996 and '97, when this Ayers study was
11 presented, there was never any environmental study done by
12 DWR or the Corps or Ayers regarding public safety,
13 transportation on state and county highways,
14 infrastructure and economic viability of the counties.
15 These issues were never considered.

16 At the time that this study was presented to the
17 public, we sent questions to the Army Corps of Engineers
18 and never received -- never received a response. And a
19 couple of the questions here are, the model description is
20 vague as to the downstream control of the model. A
21 complete description of the downstream control and why the
22 assumptions used are not skewing the model. Results
23 should be provided.

24 For example, it is possible that the downstream
25 controls are causing the model to show no impact due to

1 upstream bend cutoffs. The state of this model is steady
2 and will not show the impacts of flood storage detention.
3 Therefore, conclusions about flow splits between the Butte
4 Basin and the Sacramento River in this levee reach may be
5 flawed.

6 If overbank storage changes the flow, the overbank
7 elevations will be lower, which will have the effect of
8 drawing more water to the overbank.

9 Is there any possibility the Sacramento River at
10 M&T flood relief structure could migrate into the Butte
11 Basin? If so, wouldn't this be a significant impact?

12 And then some of you may know Burt Bundy. At the
13 time, he was the executive director of the Sacramento
14 Valley Landowners Association. He also wrote the Corps a
15 letter. And it said, "One of our main concerns is the
16 lack of complete data to develop conclusions. While the
17 general impacts to the overall system downstream may not
18 be drastically affected" -- now, that would be the
19 downstream system in the Sacramento River channel -- "that
20 same lack of accurate information may be critical to the
21 impact slope lead."

22 The low numbers given Stony Creek flooding --
23 Stony Creek hits the river at about 187 to 188. "The low
24 numbers given Stony Creek flooding is not only sloppy
25 modeling but would change the predicted results

1 substantially. Perhaps the most disappointing omission
2 was the lack of information regarding the ongoing pressure
3 the river is exerting towards the east, both above Murphy
4 Slough on M&T Ranch and downstream where the Ord Bend
5 Bridge is in question.

6 "Mike Harvey, your geomorphologist, clearly stated
7 that the river is building pressure toward movement that
8 may cause the river to move east of the bridge. We ask
9 that the Corps develop more complete information about the
10 rapid erosion occurring on both M&T property at river mile
11 192" -- which is the problem area here -- "and the
12 resulting scenario would -- should the Butte Basin flood
13 control structure be rendered ineffective and/or the Ord
14 Bend Bridge bypass must be thoroughly considered and the
15 ramifications critically analyzed."

16 We never received answers to the Corps to any of
17 these questions during the public comment period.

18 At the same time this was going on, Colonel
19 Dorothy Klasse who was then the colonel of the U.S. Army
20 Corps of Engineers wrote Congressman Herger a letter and
21 said, "The governor's flood emergency action team report
22 of May 10th, '97, recognizes that the M&T flood relief
23 structure is not a federal project feature. The FEMA
24 report recommends that the Corps formally recognize the
25 importance of the Butte Basin overflow area by adopting

1 the overflow and bank protection features into the
2 Sacramento River Flood Control Project, extending the
3 project's limits north to Chico landing, which is north of
4 our problem area, about a mile, to match the limits of the
5 Sacramento River Bank Protection Project; and approving a
6 plan for flood control for the Butte Basin overflow area."

7 This was written the same time that this study was
8 being presented that everybody is now following, and they
9 are saying that, you know, you folks up in the Butte Basin
10 are -- you just kind of need to take care of your own
11 problems up there now, because this study removes us from
12 having to do that.

13 And my last question here, doesn't DWR and the Rec
14 Board have a legal responsibility to maintain the Butte
15 Basin system as designed? I brought the original Master
16 Plan for Flood Control in the Butte Basin. This is dated
17 1964. And it talks about Chico Landing Weir, which is the
18 M&T Weir.

19 "The Weir would be a concrete structure" -- which
20 it is -- "approximately 1 mile long, with a crest
21 elevation of 129, designed to pass 60,000 cubic feet per
22 second, and under the project flood of 210,000 cubic feet
23 per second."

24 What's going to happen here now, is a lot more
25 water is going to be passed than 60,000 cubic feet per

1 second at the location of this erosion.

2 And then another part of the Master Plan for Flood
3 Control in the Butte Basin, which was -- which came from
4 the State Reclamation Board, "Studies indicate the
5 following relationships would exist with respect to
6 flooding under completion of the flood control phase of
7 the adopted plan. Under the adopted plan, flow would
8 spill over the Chico Landing Weir when main channel flow
9 is 120,000 cubic feet per second, an event which occurs
10 approximately every two and a half years."

11 The next part of this study says, "The problem of
12 the Butte Basin is concerned with the bypassing of peak
13 flood flows through the basin in such a manner as to
14 minimize the destructive effects of these flows."

15 If the river finds a new entrance to the basin and
16 we have an uncontrolled and unregulated weir, there would
17 be many, many destructive effects on both -- on all the
18 counties that are involved here.

19 There is a resolution here by the Rec Board.
20 "Whereas, the Reclamation Board, the State of California,
21 under the authority of provisions of the Water Code, of
22 State of California, held a public hearing on April 16th,
23 1964, in Chico, California, on the matter of flood control
24 problems in the Butte Basin;

25 "Whereas, the said Board had submitted to it

1 evidence, both oral and documentary, as the said public
2 hearing, April 16, '64, the need of a plan for the
3 solution of flood control problems in the said Butte
4 Basin;

5 "Whereas, the said Board, having reviewed and
6 studied the said evidence submitted to the said public
7 hearing has determined that there is a public need for a
8 plan of flood control in the said Butte Basin."

9 And, you know, what we're doing here is taking a
10 giant step backwards, because there will no longer be a
11 plan for flood control in the Butte Basin. It will be
12 flooding in the Butte Basin all the time. If the river
13 gets out here, we'll have water a lot longer running down
14 through the basin. There will be scouring across the
15 property to the east of this area.

16 And Angel Slough is less than a half a mile away.
17 Angel Slough is a historic drain down through the Butte
18 Basin. The water will hit this -- hit this slough, and
19 we'll have flooding problems a lot -- over a lot longer
20 period of time.

21 So my question is, is -- does DWR and the
22 Reclamation Board have a legal responsibility to help
23 solve this problem?

24 Thank you.

25 PRESIDENT CARTER: Thank you, Mr. Heringer.

1 Did you want Mr. Edell to address the Board,
2 please?

3 While we're waiting, any questions for
4 Mr. Heringer?

5 Thank you.

6 MR. EDELL: Good afternoon, President Carter and
7 members of the Board. My name is Stuart Edell. I work
8 for Butte County Public Works as a civil engineer. I've
9 been working on the Butte Basin flooding for over a
10 decade.

11 Butte Basin is very critical to the flood control
12 project for the entire state of California. It contains
13 about 300,000 acres of farmland that gets flooded
14 annually. The farmers expect and they understand that it
15 won't flood when we have the high flood season, or high
16 flood flows, but the low flows that would come through a
17 failure of the Phelan levee or the low flows that come as
18 part of the failure of the 3B's overflow facility are
19 causing us a lot of grief.

20 --o0o--

21 MR. EDELL: As Les pointed out, the flows are
22 designed to split about 150,000 cubic feet a second down
23 the main channel. Another 150,000 acre feet -- cubic feet
24 a second down through the Butte Basin.

25 We have a main channel of the river that's

1 carrying the water a lot faster than 150,000 cubic feet a
2 second through the Butte Basin. It's slowing down and
3 meandering through there. It takes roughly a day to fill
4 that up, with an average foot of water.

5 There's 150,000 right in the middle of the page.

6 According to landowners there, it takes roughly 12
7 hours from when 3B's overflows to get to that 150,000, the
8 same amount of time the main channel is all the way down
9 to Colusa.

10 So you are taking a lot of the peak off. But what
11 we're concerned about is, I still got a lot of water
12 sitting in Butte Basin. When that second peak hits like
13 it did in the 1980 -- January 24th through 28th, 1983
14 storms, when you have that second peak you are not going
15 to have attenuation you have now. You are going to have
16 two peaks, possibly meeting at Colusa and Mouton Weir, and
17 causing all kinds of flooding problems in the levee
18 disasters.

19 --o0o--

20 MR. EDELL: The Phelan Levee that Les was talking
21 about is about, you know, where the "N" is in Phelan.
22 It's where his erosion problem is.

23 The Murphy Slough -- and I forget to tell you this
24 as part of the impact. The Murphy slough degraded -- or
25 overflow structure is to the right of that. The Murphy

1 Slough Plug that was installed to prevent a proposed break
2 or connection of Mile 191 to 187 was put in to keep the
3 river from overflowing.

4 The 3B's overflow is a silt weir, a silt levee,
5 never constructed to Corps of DWR standards. So when we
6 get a flooding problem, the water goes over the top, and
7 it cuts through the levee, or through the bank, creating
8 channels through that bank, which we call head cuts, and
9 allows the water to flood Butte Basin when it's discharged
10 well below the flood level or even monitoring level -- or
11 warning level. Bear Plug was constructed to the state
12 standards.

13 So after a major event, you are filling Butte
14 Basin, and it causes all kinds of problems.

15 --o0o--

16 MR. EDELL: Less pointed out earlier the flooding
17 where the Ord Ferry dips. If you look on the right side
18 of the picture, you will see a little white thing sticking
19 out of the water, to the right of the telephone pole.

20 That little white thing is about the top of a
21 7-foot post, or 7 feet above that dip. The water goes
22 there with the other dips. We have the white post with
23 the water going so fast it creates a hydraulic jump at the
24 post.

25 --o0o--

1 MR. EDELL: This is the Ord Ferry -- looking
2 northeast over Ord Ferry Road, just right at the edge of
3 the tree line. And the flooding from Angel Slough and
4 through the dips on Ord Ferry Road.

5 And I would really like you to note that the
6 flooding problem we're having right there, it's clear
7 skies; it's not raining. It's well after a rain. But
8 we're having flood problems because of head cuts. We
9 could have the same flooding problem due to the failure of
10 the Phelan Levee. Water would be well below flood stage
11 at this time. We're still getting flooding. And it will
12 last a long, long time.

13 --o0o--

14 MR. EDELL: There's a picture of the same area.

15 --o0o--

16 MR. EDELL: This is the buildings, in the middle
17 of the background. Larabee Ranch. Takes roughly 12 hours
18 to get from Ord Ferry to Larabee Ranch.

19 So we would also as part of the fix, ask that the
20 Reclamation Board look at repairing or constructing 3B's
21 to Corps standards to provide the flood control or
22 adequate flood control to protect this basin.

23 If you have any question or need any other
24 information, I would be glad to answer.

25 MEMBER BURROUGHS: You said that it stays flooded

1 for a long time. Are we talking days or weeks?

2 MR. EDELL: In February 1998, we had some head
3 cuts, and we had 29 days of flooding. The Keswick Dam and
4 Black Butte Dam were releasing flows, the low warning
5 stage. But it was high enough to put about 10,000 cubic
6 feet a second through the 3B's and it produced flooding
7 and closed our roads, Highway 160, for 19 consecutive
8 days.

9 MEMBER BURROUGHS: In your opinion, if they
10 release the flows at a lower rate, would you --

11 MR. EDELL: It would help. But right now, the
12 whole state is depending on the kindness of a farmer who
13 goes in and fixes the head cuts each year.

14 If he goes away or somebody else gets in there who
15 doesn't care, you're in a real world of hurt, because you
16 will get the flooding at a lower rate.

17 MEMBER BURROUGHS: Thank you.

18 PRESIDENT CARTER: Any questions for Mr. Edell?

19 Thank you very much.

20 Mr. Swanson?

21 MR. SWANSON: Good afternoon. Keith Swanson,
22 acting division chief, Division of Flood Management.

23 Les ended his presentation and he said would DWR
24 and the Rec Board work with M&T Ranch and Butte County to
25 help solve this problem?

1 Now, I'm not going to speak for you guys, but yeah
2 of course we're going to work with them. But I don't
3 think at this point, we're willing to concede that this is
4 an entirely a state responsibility. We think there needs
5 to be some discussion on responsibilities because, you
6 know, the Phelan Levee is a private levee. It's operated
7 and maintained by M&T Ranch. The Department operates and
8 maintains the overflow structure, and so there's been a
9 clear distinction.

10 Now, the state has a role in it. There's no
11 question about it. In the past, the Reclamation Board
12 correspondence has said that if erosion gets within 150 to
13 200 feet that, you know, the state was going to help look
14 at it. And you can look at the exact language of what it
15 said. I think that was superceded something to the extent
16 that if there was a perceived threat to the integrity of
17 the Sacramento River Flood Control Project, that the state
18 would -- or the Rec Board would take some action. So
19 there's clearly been discussion on this.

20 You know, the M&T flood relief structure is tied
21 to the Phelan Levee. And so Les pointed out that he
22 talked about operation and maintenance of flood relief
23 structures. And there was some verbiage associated -- you
24 know, kind of said "pertinent structure," that kind of
25 thing. So that's in there.

1 You know, and this concern about whether the
2 Sacramento River Flood Control Project were to change
3 course, nobody would want to see that. So if that truly
4 is a concern, not only the state but the federal
5 government should have an interest in that.

6 Les talked about some of the history when the
7 Corps backed out of this. It's something that probably
8 has to be reopened because, you know, if this is a true
9 problem, we do need to address it.

10 The federal government, you know, agreed to be
11 part of the Butte Basin Plan of Flood Control. And it's
12 my understanding that the agreement was that the state
13 would maintain the flood release structure and the Corps
14 would be responsible for erosion. And, in fact, I think
15 this site was a site that was identified, in the past, as
16 needing help. And it was put off. And then it got to the
17 point where the Corps walked away from it and said, "We
18 don't have a federal interest here."

19 I'm not sure there's clear agreement on the type
20 of action that's currently required. You know, we
21 certainly heard their presentations, the concern that the
22 river would reroute into Butte Basin which would be
23 catastrophic.

24 And there's conflicting geomorphic opinions out
25 there. There's one that says that there's kind of a

1 meander belt that would tend to push the river away.
2 There's other -- I think, Les got an opinion, in an
3 e-mail, that said something to the extent that that's not
4 a good -- a valid analysis and, in fact, it truly could
5 jump into the Butte Basin. So there's some disagreement
6 there.

7 And then there's the Ayers hydraulic report that
8 the Corps used as a basis to walk away. It's my
9 understanding that that was really for, you know, a large
10 flood in the area, and it didn't talk about these
11 intermediate cases and didn't talk about more frequent
12 flooding and longer durations of water in the Butte Basin.

13 And so those kind of things do need to be
14 discussed. And we got to kind of get to the bottom of it.
15 Certainly, there's some short-term actions that are
16 required. And one is to, you know, start working with the
17 federal government to clarify what their goal is. And I
18 think they walked away from this. And I'm not sure that
19 we should accept that. We probably need to reopen
20 discussions. And I hope that we get, you know, the Rec
21 Board behind that also.

22 We need to clarify what the state interests are.
23 One thing, we have a group developing the field action
24 report that's going to be done in September. That's going
25 to be the start of collecting some of the localized

1 technical data. And we need to start identifying and
2 analyzing alternatives for this particular project.

3 We need to clarify what the local capabilities
4 are. You know, certainly, in the past, they have operated
5 and maintained the levee itself. Do they have any
6 responsibility for the repair and rehabilitation of this
7 kind of thing? I think we've got to deal with that, and
8 that's a tough issue.

9 And then even if they don't have a responsibility
10 for the repair, or regardless of whether they have a
11 responsibility for the repair, do they have to assume
12 responsibility for the monitoring? You know, should there
13 be some kind of paddle marker system set up so that we can
14 monitor this, so that if we want to take emergency
15 actions, we can.

16 And then who takes these emergency actions? We
17 would appreciate working with Butte County and P&T Ranch
18 and go to the Corps and talk to the Corps about PL 84-99
19 assistance. You know, we do need to talk about this and
20 look for what type of options that we have.

21 Now, in a longer term, you know, we certainly have
22 to get to the bottom of roles and responsibilities and
23 clarify the roles. We need to really push to reengage the
24 Corps of Engineers and the Butte Basin Plan of Flood
25 Control. We need to also look at the action plans. And

1 if you look at the typical actions that could be
2 implemented here, you know, do nothing and that's kind of
3 what we've been doing for the last 20 years or so, as
4 we've been monitoring the erosion getting closer and
5 closer. Monitoring and maybe flood fighting. And that
6 maybe is something that short term, you know, needs to be
7 implemented.

8 Possibly of waterside repairs. Now, waterside
9 repairs are -- this area is probably ground zero for the
10 discussion on restoration of fluvial process and setback
11 levees. I mean, it doesn't get any more controversial
12 than in this area when you talk about, you know, some
13 people's view of what the river system should look like
14 versus the river system that we have.

15 So be aware that if we were to go with a waterside
16 repair, it's going to be extremely expensive. It's going
17 to be extremely controversial. But certainly, that's a --
18 that's an option there. And then, you know, some type of
19 setback levee. But understanding that if we construct
20 setback levees, there are certain features in the area
21 that aren't moving.

22 The M&T pump plant isn't moving. Chico, I think,
23 has a water supply area just upstream. Both of those are
24 upstream. Those are hard points.

25 Les has been involved in major efforts to remove

1 gravel in the area that are impinging on their pump plant.

2 I think they have an EIR that's out right now.

3 There's also an effort to prevent the river from
4 migrating away from the pump plants, where Big Chico comes
5 in, move them to the west, and there's some going in on
6 Fish and Wildlife property, if I'm not mistaken.

7 So there's some areas where you can't let the
8 river move too much. Yet, there's folks that would argue
9 that you have to do this.

10 So these are complexities to the issue, you know,
11 which would make a setback levee, if you proposed it, more
12 difficult. Also, the flood release structure itself is a
13 fixed location.

14 When you look at the funding strategies and, you
15 know, could be a hundred percent local money although it
16 is going to be an expensive repair. This is a big one.
17 The state has bond money and there's a cost share program
18 that's available for local private levee repairs and
19 that's a 50/50 cost share. I think it requires a
20 governmental entity so we would probably have to have
21 Butte County involved in this also.

22 Sac Bank in the past, you know, had identified
23 this site as a repair site that they were monitoring.
24 Now, they backed away from it and Sac Bank is coming to
25 the end of its authority. But the state looks at that as

1 a very attractive option, just because the cost share
2 component where it's 75 percent federal, 25 percent state.
3 So that's something that would certainly need to be
4 investigated.

5 And then finally is a hundred percent state
6 action. And you know, we have some concern with this
7 because of the precedence, if we get involved in fixing
8 private levees. Now, this is much more complicated
9 because of the M&T flood relief structure.

10 When you get to the 3B's structure that was
11 discussed, the state has, as far as I know, no history of
12 being involved in that, short of the Rec Board provided --
13 issued permits that allow local interest to build that up.
14 And it's my understanding, and I might be wrong, but what
15 I heard is, there's been no earth work since 1997, so that
16 was the last time it was breached, and it was never
17 repaired.

18 Now, that does allow more frequent flooding in
19 Butte Basin, because they used to build it up, private
20 interests used to build it up, and that provided a barrier
21 during the overflows.

22 That, again, seems to be a really good match for
23 the cost share program. It becomes more of a stretch when
24 you start talking about the state coming in and the state
25 doing the work.

1 So I think in conclusion, you know, certainly DWR
2 is willing to work with the locals. This is a complex
3 issue; I don't see that there's a real quick fix on this.
4 I know the locals would like to say, "Hey, our job is to
5 write letters. Our job is to mobilize public opinion.
6 Your job is to fix it."

7 I think it's a little bit more complicated than
8 that. And I think we need to work together and we really
9 need to try to get the Corps engaged. We need to have a
10 short-term strategy to look out for emergency actions. We
11 need to talk about that, who would do what on that. And
12 then we need to develop a longer-term strategy that deals
13 with, you know, all these issues, roles, responsibilities,
14 design, funding, those types of things.

15 Questions? Comments?

16 PRESIDENT CARTER: Any questions for Mr. Swanson?

17 MR. EDELL: If I could provide a little bit of
18 clarification for a couple of comments. The local
19 landowner has repaired the head cuts after each major
20 event. So he's restored the channels that have been
21 created after each storm event.

22 MEMBER BURROUGHS: Could you speak up a little
23 bit. I'm having a hard time hearing you.

24 MR. EDELL: My wife yells at me when she wants me
25 to speak up.

1 I would like to clarify a little bit of what Keith
2 was talking about. The local landowner has repaired the
3 head cuts after each major storm event. He was able to
4 get his equipment in there. And the state did issue a
5 permit in 1997. And, in fact, I just put it right behind
6 your chair, Keith.

7 In 1997, permit 1669 -- 16699GM for construction
8 of a levee structure, basically at 3B's, that permit was
9 never acted on. The property owners never did build
10 anything at that time, with that permit.

11 So right now, it's just a silt bank is the entire
12 weir for the 3B's.

13 PRESIDENT CARTER: Okay. Any questions?

14 MR. HERINGER: If I could just take a moment of
15 your time, please.

16 PRESIDENT CARTER: Go ahead.

17 MR. HERINGER: I know most of you are familiar
18 with the Sacramento Conservation Area Forum.

19 It was put into effect, and it was put together
20 starting in 1986. And it set in place a plan for the
21 Sacramento River from Woodland, almost all the way up to
22 Redding.

23 And what it ended up -- the better part of it was
24 for restoration plans of the Sacramento River. And as
25 Mr. Carter knows, since he sat on that Board, the

1 landowners that were involved in that asked, the one thing
2 that they get out of that program was to limit the meander
3 of the river where it's appropriate to protect vital
4 infrastructure. This includes flood release structures;
5 this includes outfalls for the city of Chico; this
6 includes pumping plants to serve federal wildlife refuges.
7 You know, this is not an area that the levee can be
8 setback in. This is an area that the meander needs to be
9 limited.

10 Now, we've been -- we've been faithful caretakers
11 of the M&T flood relief structure and the M&T levee, since
12 1964. The problem we're having now is a problem we've all
13 been watching for 20 years. We knew sooner or later it
14 would be where it is today, a problem that needs to be
15 taken care of.

16 It needs to be taken care of now. You know, I
17 approached the Department of Water Resources in March
18 about this problem. That was when -- and I have been
19 measuring every year. Keith said we need to set controls
20 in place. I have done that. I know what's going on out
21 there.

22 We lost 75 feet one winter out there, one of the
23 driest winters on record, one of the lowest flows in
24 Sacramento River on record. We lost 75 feet out there.
25 The thing -- the river could go through our levee this

1 year. And that is not a levee that you can flood fight
2 on. It's just a regular farm levee. You can't drive big
3 trucks down that levee when the river's lapping at the
4 truck's tires.

5 This is a problem that needs to be fixed now. Why
6 are, yes -- why are we saying now that we should go to the
7 Corps of Engineers and see if we can get help? We should
8 have done this months ago. This Ayers study, I'm not sure
9 if it was ever even finalized. I've seen a draft copy of
10 it; I have never seen a final copy of it.

11 This is a problem we need to address now, before
12 the end of the year, before the winter sets in. There's a
13 thousand feet there that is at risk. Sure, it's
14 expensive. We all knew it would be. But it needs to be
15 fixed.

16 To lay this problem on the property owner when it
17 protects, you know, the entire Butte Basin is asking for
18 an awful lot. And because of mitigation issues, the cost
19 of these projects have just gone out of sight. And I
20 agree that that's a problem, but that's not a problem that
21 I can really address. This is a problem that needs to be
22 fixed in and out.

23 So I ask for your help.

24 Thank you.

25 PRESIDENT CARTER: Thank you.

1 Questions? Comments?

2 VICE-PRESIDENT HODGKINS: If the levee is lost to
3 erosion, what are the implications in terms of damages in
4 the Butte Basin?

5 MR. SWANSON: Well, certainly more water than what
6 you get now.

7 VICE-PRESIDENT HODGKINS: Okay.

8 MR. SWANSON: And I'm probably not the expert on
9 it. But I think a bigger zone event inundation. And
10 you're getting -- of what I understand, the Ayers report
11 which only dealt with the high flows, not the lower flows,
12 they said that it was self-equalizing, that you would get
13 more out sooner and then you would get less out at the --
14 you know, Goose Lake, 3B's, Mouton Weir, Colusa, you would
15 get less flow there. And so more sooner.

16 And certainly, for those properties that are up at
17 the top end, they are going to see an impact. They are
18 going to see more water.

19 VICE-PRESIDENT HODGKINS: But all the way down, at
20 least the Ayers analysis doesn't show that?

21 MR. SWANSON: Yeah.

22 PRESIDENT CARTER: Is it just more water, or is it
23 more water and more erosion, more velocity?

24 MR. SWANSON: Well, if you are getting more water
25 that means you lost the land. And so erosion -- now, the

1 big concern, of course, would be that you eroded a big
2 channel and that it tied to Angel Slough. And there's,
3 you know, differences of opinion whether that's really
4 feasible or not.

5 At this point, I'm not -- I've read -- I've read,
6 you know, somebody that says, you know, it's not going to
7 happen; and I've read somebody who's rebutted it and said,
8 it's going to happen. And so it's something that has to
9 be discussed.

10 One discussion is that the river hasn't been over
11 there in 10,000 years or some date like that. You know,
12 historically, it hasn't meandered that far. There's some
13 meander belts, ravelling material, that would tend to kick
14 it back. And then when you get into that material, it
15 should erode less.

16 Now, specifically where that is or if it's there,
17 relative to the levee, you know, I can't tell you, here,
18 that I have completely nailed it, I understand exactly
19 where it is. Where I have read, you know, somebody's
20 making that assertion.

21 PRESIDENT CARTER: If we have more water out
22 sooner, then -- and we can reasonably expect that if the
23 levee fails, doesn't that constitute a taking where you
24 are essentially inundating property that is -- hasn't
25 historically been inundated for either -- through quantity

1 or longer period of time, since we can reasonably expect
2 that? Doesn't that put that state at risk, Mr. Morgan?

3 LEGAL COUNSEL MORGAN: Kind of speculative. And I
4 think the key thing here is that this is a private levee.
5 And what we have to ascertain is whether or not, in fact,
6 this is some part of a project for which the state has
7 given assurances to the federal government that it may be
8 a project that we have to maintain in some way.

9 I'm not sure what the Board can do. The Board
10 doesn't have any money. The Board could direct the
11 Department, if it really is part of a federal project that
12 we have to maintain to a certain standard -- direct the
13 Department to form a maintenance area.

14 PRESIDENT CARTER: I guess my question is, at one
15 point, the state did have enough of an interest to develop
16 a master plan of flood control for Butte Basin. My
17 question is: Is the state backing away from that
18 interest? They had enough of an interest to define, to
19 degrade levees, to change the flow split in the river at
20 specific points. And are we now backing away from that
21 or, we're changing that plan?

22 If we are, we ought to be up front about it and
23 tell the public what we're doing and what the new plan is.

24 If we're not, then don't we -- if our interest
25 hasn't changed, then shouldn't we be following this plan?

1 What is DWR's position on the plan?

2 MR. SWANSON: Well, talking with our consultant,
3 they did not think that we had a legal mandate to repair
4 the Phelan Levee. That's what I heard.

5 Now, Ricardo was just mentioning something to me,
6 that originally, this was an uncontrolled overflow area
7 and that, you know, the local interests built it with the
8 provision that there would be, you know, the overflow
9 itself. And then the state got involved.

10 Now, this is the complexity. This is where I talk
11 about the roles need to be clarified. And we need to sit
12 down and really talk about this. We're left with a little
13 bit of a bucket of worms here, because I'm not sure it's
14 as clear as, you know, some people would like it to be.

15 And so....

16 MEMBER BURROUGHS: How long will it take for it to
17 be clear?

18 MR. SWANSON: I don't know.

19 MEMBER BURROUGHS: I mean, to me, it seems like
20 it's clear that public safety and the effect of not doing
21 anything and continuing to, you know, say it's a -- you
22 know, it's a private problem is putting, you know, putting
23 our head in the sand.

24 MR. SWANSON: Well, the state does have a cost
25 share program for private levees. It's a 50/50 cost share

1 program. And we would be more than happy to talk with the
2 locals about that. We're more than happy to work with the
3 locals and try to figure out what the Corps involvement
4 is. We're more than happy to work with the locals to
5 clarify the roles and responsibilities to figure out
6 where -- what we agree to, what we don't agree with, and
7 then look at that, you know, specifically, and we'll work
8 on the problem.

9 MEMBER BURROUGHS: Sure.

10 MR. SWANSON: But I'm not in a position right now
11 to say and to agree that this is entirely a state
12 responsibility.

13 MEMBER BURROUGHS: Well, communication is a very
14 good place to start. And Les stated that he came in March
15 to discuss that. I don't know what the dialogue was.
16 Les, you mentioned that you presented to DWR the concern.
17 Was there communication that led to any further
18 discussion?

19 MR. HERINGER: In March, I was -- I had a meeting
20 with Rod Mayer, and I gave him a packet outlining my
21 findings that we had lost 75 feet out there and it was
22 time for the state to get involved. As they said they
23 would for well over ten years.

24 And, you know, it kind of went on from there.
25 This was in March. And finally, in May, we had a meeting

1 up there at the ranch with some DWR folks and URS. URS
2 was along, as well as our county, some county supervisors,
3 and Public Works people.

4 And I just kept after them because at that time
5 they said that they would -- DWR told me that they would
6 discuss this with Don Misner, who 20 years ago was I think
7 in your job, head of the Flood Maintenance Section for
8 Department of Water Resources and also Ward Tabor who was
9 on the Reclamation Board. And that was never done until
10 just very recently here because I kept pressing them to
11 talk to the old guard about this, as they said they would.

12 And then in early July, we had another meeting up
13 there with a whole different bunch of folks from DWR,
14 again, Dave Wheeldon, who is in the crowd here, was the
15 one that lead that group of folks from DWR to look at the
16 problem again. And they had told me all along that they
17 would give me an answer in September, whether or not they
18 would get involved.

19 And in the meantime, I have been providing them,
20 as well as you, with a lot of factual, historical
21 information on the M&T overflow structure as well as the
22 Phelan Levee and how the state had a responsibility to
23 maintain this point in the Sacramento River, to protect
24 the Butte Basin overflow area, as it was originally
25 designed by the State Reclamation Board.

1 And so, you know, I came down last month, and
2 Keith was here then also, and here I am again. And, you
3 know, I don't know where we are with the process. And,
4 you know, I think your question is very good. You know, I
5 would be more than happy to talk to anybody. That's why
6 I'm here. I want -- I want resolution of this problem and
7 it needs to be done expeditiously.

8 PRESIDENT CARTER: Mr. Punia?

9 GENERAL MANAGER PUNIA: Just a little bit of
10 background information on this. There is a Butte Basin
11 Plan. This was adopted December 1986 by the Reclamation
12 Board. Basically, this plan shows that what type of flow
13 we want to flow at M&T and Goose Lake. It did mention
14 about the Phelan Levee. It has the plan that -- how much
15 water we want to go into the Butte Basin from the overflow
16 areas and 3B's and the Goose Lake.

17 And the Ayers have done the modeling run for this
18 area. And their analysis is showing that -- I will just
19 read a general result conclusion that a 50-year event,
20 which has a peak discharge of approximately 300,000 CFS.
21 The peak discharge conveyed within the project levee at
22 river mile 173 is 174,000 CFS. The value exceeds the
23 design, 160,000 CFS. So the design is 160,000 CFS, but if
24 things get out of hand, then it will push 174,000 into the
25 levee system rather than 160. So that's a quick --

1 But the Ayers report shows what happens at
2 different discharge levels, how the flow will change at
3 various locations. But based upon the report, the Corps
4 conclusion was that it doesn't impact significantly the
5 flow between the Butte Basin and the levee system.

6 MEMBER BURROUGHS: It says it doesn't?

7 GENERAL MANAGER PUNIA: Doesn't.

8 PRESIDENT CARTER: What doesn't? What doesn't
9 affect the flow?

10 GENERAL MANAGER PUNIA: If the river stops
11 following at a different location, then M&T -- then the
12 flow split between the Butte Basin and the levee system
13 doesn't change significantly.

14 PRESIDENT CARTER: So they are saying that if the
15 levee fails, it doesn't change the flow split?

16 GENERAL MANAGER PUNIA: That's correct.

17 PRESIDENT CARTER: And by virtue of that, then
18 they have no interest in the levee?

19 GENERAL MANAGER PUNIA: That's correct.

20 So the question is whether the state or the
21 federal government has an interest in protecting this
22 private levee. I think that's what DWR has to analyze a
23 little more, beyond what's discussed in the Ayers report.

24 And I'm assuming Keith's staff is doing that and
25 hopefully have some kind of a conclusion shortly so that

1 we can provide Les -- a conclusion whether the state will
2 do something or he has to protect by himself.

3 PRESIDENT CARTER: If you take that kind of logic,
4 I don't know if I'm thinking -- if you take that kind of
5 logic further, then you would say the flow split between
6 the Sacramento and the bypass doesn't really change,
7 because it all ends up at the same spot. And yet, we have
8 a federal interest to protect that because of the public
9 safety issue.

10 To use a levee failure as a flood relief valve
11 intentionally is just -- I mean, it doesn't make sense to
12 me at all. The levees were there for a purpose to begin
13 with. And unless you make a conscious decision, and I
14 guess this is what Ayers is suggesting, and this is what
15 the Corps has adopted -- the state doesn't have a position
16 on this yet. But they are saying that that levee doesn't
17 matter; we'll let that area flood uncontrollably, and we
18 don't have an interest.

19 I don't know that I'm prepared to make that leap
20 at this point.

21 GENERAL MANAGER PUNIA: I think the state interest
22 is the way the Federal Flood Control Project is designed.
23 Then at that reach, we want half, about 300,000, coming
24 in, that half should stay into the levee system and the
25 other half should go into the Butte Basin.

1 So they are saying that based upon this modeling
2 effort, it's not conclusive enough to make that if the
3 levees fail in that area, that the flow split will change
4 significantly, that it will have a major impact on the
5 functioning of the federal flood control project.

6 LEGAL COUNSEL MORGAN: There's sort of two
7 different issues. And one is whether or not those private
8 levees are integral to the successful operation of a
9 federal project, that is part of the adopted plan of flood
10 control that this Board has adopted.

11 And then as a secondary matter, if not -- I mean,
12 if the answer is yes, if that's an integral element to the
13 successful functioning of a federal project, then
14 arguably, the Board would be directing the Department to
15 look at fixing for that.

16 If not, then the separate question is, does the
17 state have any other interest in there, unrelated. But
18 currently, there's lots of places with private levees
19 where the levees, whether they succeed or fail, are
20 unrelated to the state's plan of flood control.

21 A lot of the levees along, you know, Delta Islands
22 in the far western Delta are good examples of that --
23 private levees of whether they succeed or fail will not
24 have any -- from what the engineer is telling me, will
25 have no effect on the successful operation of the State

1 Plan of Flood Control. So the Board's interest is
2 extremely limited there. And the state participation has
3 been mostly for those levees that are near the state water
4 project to make sure that they don't fail and affect water
5 quality, but not for flooding.

6 So those are two issues, and it's entirely fair,
7 once the Department has done its analysis, come back
8 before the Board. And as Keith said, the DWR lawyer's
9 opinion is, it's not a legal responsibility of the state
10 to do that. But again, that doesn't end the inquiry as to
11 whether or not that's a state interest there. That's a
12 separate question, and it might involve adopting a new
13 project.

14 MEMBER BURROUGHS: Well -- and I think there's
15 more to that as well, talking about if there was a -- an
16 agreement about the meandering and the control of where
17 the water is going.

18 LEGAL COUNSEL MORGAN: In the equitable sense that
19 people have made promises and they are hoping that they
20 will -- well, I can't speak to that. I can only say
21 whether or not, once the Department has evaluated whether
22 or not this is critical of the functioning of the project,
23 whether or not that creates a state responsibility to take
24 care of.

25 MEMBER BURROUGHS: It seems to me like at this

1 point, that we definitely need to have communication with
2 the Corps, as Keith said he would do.

3 And I'm surprised that, you know, if it has
4 happened or hasn't happened, I don't know. But
5 definitely, that's a good starting point to get back
6 involved in looking at the situation. Obviously, from
7 this, you know, tons of paperwork that we have, there's
8 definitely a history that's been on and off, over the
9 years. And while maybe 20 years ago, for whatever reason,
10 you know, things were just left status quo, today's a
11 different day.

12 And I think we need to look at what are all of the
13 possibilities that we can pursue in trying to look at
14 addressing the problem.

15 I don't think it's just a one thing -- let's go
16 ask the Corps. But I think we really need to do
17 multifaceted communication with not only the legal aspect
18 of it but also the actual feasibility of what is
19 available. We have talked about some of the bond money
20 issue possibly. But I think there's a lot of areas that
21 we could explore.

22 MR. SHAPIRO: Mr. Carter, as you know, my name is
23 Scott Shapiro. I've been working with Les Heringer on
24 this issue for a number of months.

25 I just wanted to remind the Board that this Board

1 ordered M&T to lower its levee, and that was what created
2 the M&T Weir. You ordered them to. You said, you have a
3 private levee, but it's the state's interest in
4 controlling the flood control system to assure that a
5 particular amount of water leaves the river at a
6 particular place and goes into the Butte Basin at that
7 place.

8 So you had enough of an interest in the private
9 levee to order them to lower their levee. And now the
10 question is, do you still have enough of an interest in
11 the same levee to make sure it functions the way it was
12 supposed to originally? And I apologize for the strident
13 tone, because I hear tremendous support from this Board
14 for, I think, the position I just stated.

15 But it's just interesting that the state clearly
16 had enough interest to order the levee lower, but now it's
17 taking months and months and months to even get to a point
18 of figuring out how to have a discussion about who needs
19 to fix it.

20 PRESIDENT CARTER: Thank you.

21 Mr. Swanson, what kind of time frame -- I know you
22 have been asked this question already today. What kind of
23 time frame are we talking about for you to have your
24 discussions, your talks, your analysis, to come up with
25 some sort of a conclusion or an idea of what the state's

1 goal is in this case?

2 MR. SWANSON: As complex as this is, I'm not
3 willing to commit a time frame. I would be willing to
4 come back to and report to the Board, on a regular basis,
5 on what action has occurred.

6 But you know, this is -- this is 30 years, 40
7 years in the making, this issue. And so it's not going to
8 be easy to get through.

9 I did propose some actions that we could take, on
10 the short term, to try to minimize some of the risks. And
11 so we'll follow up on that, and we'll report on that.

12 But as far as committing to, you know, specifics
13 at this point in time, I don't think I can do that.

14 VICE-PRESIDENT HODGKINS: Keith, is it fair to say
15 that, in effect, the Ayers analysis resulted in a
16 conclusion that there's no obligation on the part of the
17 state or the Corps to limit the flood in the Butte Basin
18 to 150,000 cubic feet a second, or 160,000, and then if it
19 went up 174, there was no interest in that from the
20 standpoint of the federal government and the state? I
21 think that's what it looks like to me.

22 MR. SWANSON: Yes. And I don't know that
23 necessarily that the state adopted it. I think the Ayers
24 report was done for the federal government. And, you
25 know, I think it concluded that a failure of the Phelan

1 Levee wouldn't affect the overall flood split of the
2 project.

3 VICE-PRESIDENT HODGKINS: Okay. So a question
4 here would be, if the state allows this erosion to
5 continue to the point where that levee fails, what are the
6 increased flood damages that would accrue in the flood
7 basin as a result of that, and is the state potentially
8 liable for those? Is that a fair question?

9 MR. SWANSON: Yes, it's a fair question to ask.
10 And, you know, because -- you know, there is likely going
11 to be an increase in flood damages. Who's liable for them
12 is, you know, up to debate.

13 You know, Scott Shapiro indicated that, you know,
14 this was an actual overflow area. A levee was constructed
15 across it. The Rec Board stepped in and said, "You can't
16 do that. You need to construct -- there needs to be an
17 overflow weir so you're not to degrade a portion of the
18 levee."

19 Now, because the Rec Board said that there has to
20 be an overflow section of the levee, does that mean that
21 the state then has an interest in preserving that levee,
22 operating and maintaining that levee? I mean, that's --
23 that's a question.

24 And then Scott's point that even if we don't have
25 a legal responsibility, do we have an interest? And we

1 very well still could have that interest.

2 VICE-PRESIDENT HODGKINS: So it could be that, in
3 effect, before the levee was constructed, more than
4 160,000 went into the Butte Basin. Okay? Somebody came
5 along, I assume M&T Ranch, and constructed a levee, at
6 which point the Corps and the Rec Board got involved and
7 said, "Wow, you know, we assume that that would continue
8 to function as a natural overflow in designing the
9 reservoir project. So you have to accommodate that
10 overflow."

11 Is that what happened?

12 MR. SWANSON: Well, that's my understanding. You
13 know, I didn't go back that far. And so if somebody wants
14 to correct that, please come up. But that's my
15 understanding of the situation.

16 VICE-PRESIDENT HODGKINS: Okay. It makes a big
17 difference, because if there was more capacity at one time
18 and the capacity has been reduced for the benefit of the
19 property or is under construction of a private levee,
20 then, to some extent, there's an argument that it is those
21 property owners' responsibility to take care of
22 maintaining the reduced flooding that occurs.

23 If, on the other hand, there was a design capacity
24 in the system for what goes in the Butte Basin and what
25 goes in the Sacramento River, then it seems to me, the

1 state has some obligation. I'm thinking of Paterno, here,
2 to make sure that the arrangement continues.

3 And I'm just trying to find a way to give you an
4 answer one way or the other so you can either sue us or we
5 can go to work on the project, whichever is convenient.
6 And it's frustrating not to know. So anyway, I guess I
7 don't know other than that, what we're doing.

8 MR. HERINGER: M&T did not construct that levee.
9 The M&T took over there in the mid 1930s. I mean, the
10 whole Sacramento Valley used to be an overflow area. I
11 mean, we all know that. People build levees, have levees
12 at least a hundred years old. I don't know where the idea
13 came from that that's a recent levee. It's not a recent
14 levee.

15 Colusa, Sacramento used to be overflow areas. I
16 mean, that levee was built at least a hundred years ago,
17 the part of the levee we're talking about.

18 VICE-PRESIDENT HODGKINS: Did anyone look at the
19 1924 report to see if it says anything about that?

20 MR. HERINGER: I have not, no.

21 VICE-PRESIDENT HODGKINS: Okay.

22 MR. HERINGER: But it is an area that needs
23 protecting. Butte Basin is an area that we've all learned
24 to accept our fair share of the flows. But when you are
25 talking about putting it all out at one location, you

1 know, this is not the way that the Rec Board, in 1964,
2 designed this floodway.

3 PRESIDENT CARTER: And I guess when the '57 --
4 when the system was accepted, by the state from the Corps,
5 as designed, that levee was in existence at that time, and
6 in fact, was a little higher than it is -- than it is
7 today. Because in the '60s, the levee was degraded to
8 provide more overflow. Is that correct?

9 MR. HERINGER: Well, the M&T -- the weir, that
10 1 mile weir site location was degraded. But this levee,
11 you know, that we're talking about now, was not degraded.
12 This is about a mile and a half upriver from the M&T Weir
13 site, which is now a hardened location for overflow.

14 PRESIDENT CARTER: So when the system was accepted
15 by the state, the M&T Weir was higher than it is today?

16 MR. HERINGER: Yes, it was.

17 PRESIDENT CARTER: And after the system design
18 specs were established, the M&T Weir was degraded to allow
19 for more flow into the Butte Basin?

20 MR. HERINGER: That's correct.

21 PRESIDENT CARTER: And change the flow split a
22 little bit or a lot?

23 MR. HERINGER: That created a lot more flow in the
24 Basin, and they wanted that to protect the project levees,
25 you know, downstream of the Yamasako Ranch.

1 PRESIDENT CARTER: That's pretty clear to me.

2 MR. SHAPIRO: Mr. Carter, one brief point. One of
3 the disadvantages of not being George Basey is, I didn't
4 live through all of this. But when talking with George
5 about this, because George worked on this, his comment
6 was, he never understood why M&T agreed to the Rec Board's
7 demand to lower the levee without compensation. There was
8 no compensation.

9 He always thought that there should have been
10 compensation because the project benefitted by allowing
11 this land to flood more frequently and more often, at a
12 higher intensity.

13 This strikes me as just the next step in the exact
14 same question of why the project levee should be
15 benefitting by increase in lowering flows that come into
16 the Butte Basin at a higher point.

17 PRESIDENT CARTER: So there were no flowage
18 purchased, to his recollection?

19 MR. SHAPIRO: No. I mean, George told me that,
20 you know, at the time he thought M&T should have contested
21 it. But they were good neighbors and they said, "We're
22 going to do this to benefit the system."

23 PRESIDENT CARTER: Mr. Wheeldon?

24 MR. WHEELDON: Good afternoon. I'm Dave Wheeldon
25 with the Department of Water Resources, in Flood

1 Management.

2 Keith had asked if there was maybe some more
3 information that could be added about the flow split, and
4 the intention of that flow split when the Rec Board
5 requested the M&T structure be lowered to allow more flow
6 in.

7 I think it was determined at that time, that
8 150 CFS coming down the river was the maximum that the
9 river, at that point and downstream, would be able to
10 handle without impacting the structures below that point.

11 So I don't think the flow split was designed to
12 say 150 CFS is coming out -- going into the Butte Basin
13 overflow. I think it was just limiting the Sacramento
14 reach, Sacramento -- main Sacramento River to 150 CFS.
15 And that was based on the design flow that they were using
16 for that study.

17 So I don't think the intent of that, lowering the
18 M&T, degrading those structures, was specifically to say
19 only 150 CFS can come through here. I think the intent
20 was, you lower those structures so that no more than
21 150 CFS is coming through the main Sacramento channel.

22 PRESIDENT CARTER: Okay.

23 Thank you.

24 GENERAL MANAGER PUNIA: Just a little bit of
25 perspective. This plan says --

1 PRESIDENT CARTER: Which plan is that?

2 GENERAL MANAGER PUNIA: 1986, statement giving
3 some historic perspective. This is talking about the M&T
4 flood relief structure.

5 The original levee was degraded in 1964 to
6 147 feet NGVD under the order of the Reclamation Board.
7 So it was 1964. And since then, it's saying it's
8 maintaining that elevation.

9 PRESIDENT CARTER: So Mr. Swanson, I think the
10 Board, correct me if I'm wrong, would like you to report
11 back regularly, monthly, on what's going on with this. So
12 please include that as part of the monthly report for the
13 Department of Water Resources.

14 MR. SWANSON: Okay.

15 PRESIDENT CARTER: Very good.

16 Any other questions on this?

17 Very good.

18 MEMBER BURROUGHS: Did DWR get all the same
19 information that we have to get their historical history,
20 all the packet of information?

21 PRESIDENT CARTER: I don't know. Mr. Wheeldon or
22 Mr. Swanson, do you have everything that we have with
23 regard to this project in terms of the information?

24 MR. WHEELDON: Is that the information that Les
25 provided you?

1 Yeah, we have that.

2 PRESIDENT CARTER: Yes, Mr. Heringer and Mr. Edell
3 provided a couple of CDs and a lot of paper.

4 MR. WHEELDON: Yeah, we have that. They provided
5 that to us.

6 PRESIDENT CARTER: Okay. Very good.

7 MEMBER BURROUGHS: Keith, just for clarification,
8 who and what agencies do you propose to communicate with
9 to see where we're at with this?

10 MR. SWANSON: Well, initially, the Corps of
11 Engineers. And we'll keep in contact with Les and Stuart.

12 MEMBER BURROUGHS: Is there any other
13 communication that we could be continuing, simultaneously?

14 MR. SWANSON: You know, until we have a plan of
15 action, there's really not a lot to do as far as talking
16 with the resource agencies. Maybe at the collaborative,
17 we can talk about it as an issue and kind of start laying
18 some groundwork that this is an area where there's limited
19 ability to allow migration of the river, and start those
20 discussions, as preparatory-type information sharing.

21 MEMBER BURROUGHS: You mentioned that you had some
22 preliminary recommendations that could lessen -- could you
23 share some of that right now?

24 MR. SWANSON: Well, again I think it would be
25 incumbent upon M&T to maybe put, like, 2-by-6s in, you

1 know, moving back every 10 feet back, so that as -- when
2 the water is up, that we get some sense for the rate of
3 erosion. I mean, as the boards start falling in, then you
4 have some sense of the urgency. So that would be
5 something good to do at the local level.

6 Certainly, talking with the Corps of Engineers
7 about PL 84-99 emergency response, and seeing if there's
8 anything that can be done.

9 Now, Les did mention that this is a small levee.
10 I don't know if there's no ability or any ability to go on
11 the backside and, you know, transport rock into the area
12 during a flood emergency. And so -- and if we can get the
13 Corps interested in that, sometimes they will come out and
14 do a pre-event-type planning exercise where they have maps
15 already laid out. They have quantity -- you know,
16 material quantities calculated. They have an idea where
17 the material might come from, how the material would be
18 brought in, that kind of thing.

19 So it would be something that, if it's feasible,
20 you know, we would like to work with the Corps and work
21 with Les to have a shelf in the event there is an
22 emergency, you know, as predicated on trying to get the
23 Corps.

24 MEMBER BURROUGHS: I think that's a great idea to
25 have something in place for pre-emergency.

1 I have one last question if we have time.

2 PRESIDENT CARTER: Yes.

3 MEMBER BURROUGHS: Mr. Heringer, if you could come
4 up and share with -- this is just brainstorming. I'd like
5 to know what you have in mind for solutions that you think
6 will solve your problem. What needs to be done? What can
7 be done?

8 MR. HERINGER: Well, there are two or three ways
9 to go out and fix this problem. One is to go out on the
10 water and fix it, which is what Keith was talking about
11 which is, you know, a hundred and some-odd feet from the
12 levee. So there isn't much room to fix it that way.

13 And another way to fix it would be to go back and
14 fix it and just put some -- just put some rock along our
15 levee, right now.

16 So if the river reaches the levee this winter, the
17 rock falls in and protects the levee. That's something
18 that could be done right now --

19 PRESIDENT CARTER: You are talking about
20 launchable --

21 MR. HERINGER: That's what I'm talking about, yes.

22 PRESIDENT CARTER: -- rock?

23 MR. HERINGER: That is an option. And maybe
24 that's a very good option.

25 And that's not something that could be done when

1 the river is, you know, a foot from the top of our levee.
2 You know, you are just not going to get equipment out
3 there. Because, you know, when that river is up, you get
4 a lot of seepage, you know, on the farmland, on the
5 landside of the levee. And you are just not going to get
6 equipment out there, you know, when we're in a flood
7 event. It would have to be something that would need to
8 be done when it's dry.

9 MEMBER BURROUGHS: Okay. Those were two things.
10 Is there anything else?

11 MR. HERINGER: That's the two that I....

12 MEMBER BURROUGHS: We don't have quorum today, and
13 there isn't for an action item to be voted on.

14 But I would just share with you that there is
15 interest in trying to help you. And if Keith's in
16 communication, if you can look at -- if there's a way to
17 get this rock for you. I hope it can be done.

18 MR. HERINGER: I stand ready to come to Sacramento
19 any time, you know, on any day, to sit down with DWR or
20 the Corps or anybody. It doesn't matter. I'm here. I've
21 been trying to open up lines of communication here for six
22 months now. You can tell that by the amount of
23 information that I have prepared for you, which has all
24 gone to DWR. I'm here.

25 Thank you.

1 PRESIDENT CARTER: I echo Rose Marie's comments in
2 terms of, I think it's nice to be proactive about an
3 emergency event. It would be even better to be proactive
4 and not have the emergency to begin with. So that's
5 probably what we ought to be working towards.

6 That is the spirit in which the administration has
7 been approaching a lot of these flood control projects as
8 well, or flood control project problems, is trying to be
9 proactive. It's much better, much cheaper, much easier
10 that way, as opposed to the old method of PL 84-99 and
11 trying to do it while it's -- while we have the emergency.

12 And in this case, it doesn't sound like it's
13 really very feasible to do it while we have a flood
14 emergency. So I hope to hear that something's happening
15 in that regard next month.

16 MR. HERINGER: I'm ready to come to Sacramento for
17 meetings. All's I need is a phone call.

18 PRESIDENT CARTER: Any other questions? Comments?

19 Very good. Then we are adjourned until next
20 month.

21 (The Reclamation Board meeting adjourned at
22 3:48 p.m.)

23
24
25

1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing Reclamation Board Meeting, Closed Session, was
6 reported in shorthand by me, Kathryn S. Swank, a Certified
7 Shorthand Reporter of the State of California, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting nor in any
11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 29th day of August, 2007.

14

15

16

17

18

19

20

21

22 KATHRYN S. SWANK, CSR

23 Certified Shorthand Reporter

24 License No. 13061

25